

EXHIBIT “L”



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 CORPUS CHRISTI DIVISION
4

5 IN RE:

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) CASE NO: MDL-03-1553
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)
) SILICA PRODUCTS
)

)
)
) Corpus Christi, Texas
)

7 LIABILITY LITIGATION
)

) Monday, August 22, 2005
)

8) (9:15 a.m. to 11:17 a.m.)
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9)
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10
11 STATUS CONFERENCE
12

13 BEFORE THE HONORABLE JANIS GRAHAM JACK,
14 UNITED STATES DISTRICT COURT JUDGE
15

16 Appearances: (See next page)
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25 transcript produced by transcription service.

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1 Corpus Christi, Texas; Monday, August 22, 2005; 9:15 a.m.
 2 (Call to Order)
 3 THE COURT: Thank you. You may be seated.
 4 I apologize for the delay.
 5 THE CLERK: Court calls MDL 03-1553, In Re: Silica
 6 Litigation.
 7 May I have appearances, please?
 8 MS. SNAPKA: Kathy Snapka, Plaintiff Liaison
 9 Counsel. Present, your Honor.
 10 MR. BARGER: Darrell Barger, Defense Liaison
 11 Counsel. Present, your Honor.
 12 THE COURT: Since you all have a copy of the agenda,
 13 can you give me an update enough that there is a direct
 14 communication with the Mississippi Supreme Court? Does anybody
 15 have any heads up on that at all?
 16 MR. KRUTZ: Good morning, your Honor.
 17 THE COURT: Good morning.
 18 MR. KRUTZ: The briefing was concluded on Friday, so
 19 the petitions have all been briefed by all parties. It's in the
 20 hands of the court, and that's all we know.
 21 THE COURT: Okay.
 22 MR. KRUTZ: Just as a heads up, your Honor, I think
 23 the cases on Exhibit A under your present orders are to be
 24 remanded August 30th.
 25 THE COURT: Yes.

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1 ADDITIONAL APPEARANCES:
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1 MR. KRUTZ: If by the end of this week we have not
 2 heard from the Mississippi Supreme Court, we will be filing a
 3 Motion for an additional 30 days.
 4 THE COURT: Why thank you.
 5 MR. HOOPER: Your Honor, Scott Hooper here.
 6 To advise the Court, we've advised the Mississippi
 7 Supreme Court that they should not proceed because under Title
 8 28, United States Code, Section 1446(d), as long as this Court
 9 intends to exert jurisdiction over those cases, the State Court
 10 is barred from acting in those cases.
 11 So it's to further the ends that the Defendants are
 12 seeking.
 13 THE COURT: Well, I don't know how they're going to
 14 go with that after I've already said in my order I don't have
 15 jurisdiction over them. And that will clear the way for them to
 16 do whatever they want to do in the interest of efficiency, but I
 17 understand your argument.
 18 MR. HOOPER: Okay. Under 1446(d), though, as long
 19 as this Court holds -- hold onto cases --
 20 THE COURT: Save it for Mississippi. Thanks.
 21 MR. HOOPER: Okay.
 22 THE COURT: I got it. Thank you.
 23 Next, the Motion to Remand and I think there are 12
 24 -- well, I have 17 remaining cases. I have gone ahead and
 25 dismissed Nix -- let me make sure I've got it right, no, sorry

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 -- Thirsty, Crowe, Greer, Large yesterday, so I have 17 left 2 that are not covered by the last MDL Order. 3 Are the attorneys for Covey v. Union Pacific here? 4 I'm going to start backward. 5 MR. FABRY: Yes, your Honor. John Fabry for the 6 Plaintiffs in that case. 7 THE COURT: And the Defendants? Same Defendants? 8 MR. AVELINO: Your Honor, one additional Defendant 9 from the other MDL cases from St. Louis. I am Victor Avelino, 10 and I'm for Defendants Sphinx Adsorbents, who are not a 11 defendant in any other matter. 12 THE COURT: Thank you, sir. 13 Is there any contest about jurisdiction in that 14 case? 15 MR. AVELINO: I'm thought there was not, but I would 16 defer to John Fabry for any contacts with other MDL counsel. 17 MR. FABRY: No, your Honor. 18 THE COURT: Okay. Then at some point I'm going to 19 go through these that I have left and enter Scheduling Orders 20 for these cases that I still have. 21 Wilson versus 3M Company? 22 MR. MULLINS: This is Steve Mullins on behalf of the 23 Plaintiffs. I agree with opposing counsel. He asked the Court 24 to pass our Motions to Remain in all of the cases. 25 THE COURT: I'm sorry? I'm not going to pass on</p>	<p style="text-align: right;">Page 12</p> <p>1 ones left. 2 MR. MANUEL: Knight and Clay are the two -- I think 3 that with regard to Thirsty, Greer, Moore, Large, and Crowe, I 4 understood your Honor to say this morning that you had dismissed 5 them. I know that there's a -- 6 THE COURT: Oh, no, no, no, no. 7 MR. MANUEL: Oh. 8 THE COURT: I still have Thirsty, Greer, Large, and 9 Crowe. I'm taking them up one at a time. 10 MR. MANUEL: Okay. We've got a similar motion -- 11 THE COURT: The rest of them have Motions to Remand 12 filed by the Plaintiffs. 13 MR. MANUEL: Correct. We've got a Motion to Remand 14 on with regard to Clay, Crowe, Large, Moore, Greer, and Thirsty. 15 We do note that we'd like to withdraw our Motion to Remand on 16 Knight because I've got an Order of Dismissal for 3M. 17 THE COURT: Well, that would be good. 18 Do you want to hand me that? 19 MR. MANUEL: Yes. 20 And we also have -- 21 THE COURT: And that's the only Motion to Remand 22 pending. 23 MR. MANUEL: On those cases? 24 THE COURT: On Knight. 25 MR. MANUEL: On Knight, that's correct.</p>
<p style="text-align: right;">Page 11</p> <p>1 anything. If you filed them, I'm going to talk about them. 2 I understand that -- you represent the plaintiff? 3 MR. MULLINS: Yes. Yes, ma'am. 4 THE COURT: And the problem was that this case was 5 removed greater than a year after it was -- the first Defendant 6 was served; is that correct? 7 MR. MULLINS: I believe that is correct. 8 THE COURT: Does anybody contest that? 9 (No Audible Response) 10 Then if there are no objections, I'm going to remand 11 Wilson versus 3M. 12 Clay versus Pulmosan Safety Equipment Company. 13 MR. MANUEL: Yes, your Honor. 14 THE COURT: That has a Motion to Remand by 3M, which 15 I don't think you can do that, but -- 16 MR. MANUEL: We don't think you can. 17 THE COURT: Well, I think I can take up jurisdiction 18 at any time, but I'm not sure that a Defendant can file a Motion 19 to Remand -- 20 MR. MANUEL: Well, your Honor -- 21 THE COURT: -- when the Defendants removed the case. 22 MR. MANUEL: Will Manuel on behalf of 3M. We filed 23 a Motion to Remand on several cases and it's actually come down 24 now to just a few cases because of either dismissals or -- 25 THE COURT: And Knight and Clay, I think, are the</p>	<p style="text-align: right;">Page 13</p> <p>1 THE COURT: So if you can hand me up -- Ms. Gano, 2 would you hand me that? 3 THE COURT RECORDER: Sure, your Honor. 4 (Pause) 5 THE COURT: And that is unopposed? 6 MR. MANUEL: Yes. The motion -- I mean, the Agreed 7 Order of Dismissal is unopposed, as to 3M on Knight. 8 THE COURT: Right. 9 MR. MANUEL: We also had a Motion to Remand 3M, 10 specifically, on Cole. We've also got an Agreed Order of 11 Dismissal for the entire Cole case, which would take care of 12 that Motion to Remand, if you -- 13 THE COURT: Okay. 14 MR. MANUEL: Would you like me to hand that to you 15 Honor? 16 THE COURT: Yes, please. Is that entire case is 17 gone -- will be gone, then? 18 MR. MANUEL: That entire case will be dismissed 19 without prejudice, your Honor. 20 So, your Honor, as far as 3M's Motion to Remand, we 21 ended up covering Thirsty, Greer, Moore, Large, Crowe -- 22 THE COURT: And Clay is left. 23 MR. MANUEL: -- and Clay. 24 THE COURT: All of them but Clay had Motions to 25 Remand by the Plaintiff.</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. MANUEL: As well.</p> <p>2 THE COURT: Yes.</p> <p>3 MR. MANUEL: That is correct. That is correct.</p> <p>4 With regard to Clay, we would just reargue again --</p> <p>5 if you'd like to hear my argument on the Motion to Remand on</p> <p>6 Clay?</p> <p>7 THE COURT: Who is the Plaintiff's Attorney in Clay?</p> <p>8 MR. SMITH: I am, your Honor, Allen Smith.</p> <p>9 THE COURT: Did you intend to file -- I guess</p> <p>10 procedurally it's too late for you to file a Motion to Remand.</p> <p>11 MR. SMITH: No, your Honor. I didn't intend to file</p> <p>12 a motion.</p> <p>13 THE COURT: Did 3M join in the removal?</p> <p>14 MR. MANUEL: Of Clay? I'd have to check. I'm not</p> <p>15 sure if we did because that was one of the later removed cases</p> <p>16 after we had already gotten here. But --</p> <p>17 MR. KRUTZ: Your Honor, and we oppose -- the</p> <p>18 Defendants that we represent oppose 3M's Motion to Remand.</p> <p>19 THE COURT: Did anyone -- well, who removed the</p> <p>20 case?</p> <p>21 MR. KRUTZ: We did.</p> <p>22 THE COURT: You did? Did 3M join you in the</p> <p>23 removal?</p> <p>24 MR. KRUTZ: We'd have to check.</p> <p>25 THE COURT: Pardon?</p>	<p style="text-align: right;">Page 16</p> <p>1 and then --</p> <p>2 MR. MANUEL: Okay. I am. I'll just write it down</p> <p>3 and remember it.</p> <p>4 We filed our Motion to Remand on Clay, as well as we</p> <p>5 did on the other cases on the exact same grounds and so in the</p> <p>6 interest of making things quick --</p> <p>7 THE COURT: Go ahead.</p> <p>8 MR. MANUEL: -- I'd like to just go ahead and make</p> <p>9 those arguments.</p> <p>10 Clay is a single plaintiff case. The Thirsty,</p> <p>11 Greer, Moore, Large, and Crowe cases are multiple plaintiff</p> <p>12 cases, but I've been informed that the Plaintiff's lawyers are</p> <p>13 considering dismissing almost a 136 plaintiffs out of that --</p> <p>14 those first five cases, the Thirsty, Greer, Moore, Large, and</p> <p>15 Crowe, but that still leaves some plaintiffs that are either the</p> <p>16 subject of a Motion to Substitute Counsel or may still be</p> <p>17 retained with the original counsel.</p> <p>18 What we're talking about here is the Court is well</p> <p>19 aware of the jurisdictional inquiry that you made in Order 29,</p> <p>20 which is 3M were the people that provided the Fact Sheets and</p> <p>21 said that with regard to this Court's Orders 4 and Order 6 in</p> <p>22 which the parties agreed that they would look at the Fact Sheets</p> <p>23 as an attempt to figure out where they had factual claims -- the</p> <p>24 Plaintiffs had factual claims against the Defendants, that is</p> <p>25 where the analysis can be done and that the primary motivated</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. HANNULA: We'd have to check, your Honor. I</p> <p>2 don't know.</p> <p>3 THE COURT: Well, this would be the time to check.</p> <p>4 MR. MANUEL: Your Honor, if we -- I can make my</p> <p>5 argument very briefly whether we -- and your Honor can take it</p> <p>6 under consideration with regard to whether we joined or we did</p> <p>7 not join, but --</p> <p>8 THE COURT: Well, do you know whether you joined or</p> <p>9 didn't join?</p> <p>10 MR. MANUEL: If we joined, we would have joined</p> <p>11 within the 30 days because we're pretty good rule followers on</p> <p>12 that issue.</p> <p>13 THE COURT: Well, then how do you get to file a</p> <p>14 Motion to Remand, if you joined in the removal?</p> <p>15 MR. MANUEL: Well, your Honor, we would argue</p> <p>16 that --</p> <p>17 THE COURT: Do you have any case law on this?</p> <p>18 MR. MANUEL: I don't have any case law on that</p> <p>19 issue, but I can get some case law on that issue.</p> <p>20 THE COURT: You can?</p> <p>21 MR. MANUEL: Not today, but I can -- I'd be willing</p> <p>22 to file a Supplemental Brief on that issue.</p> <p>23 THE COURT: Okay.</p> <p>24 MR. MANUEL: We filed our Motion to Remand --</p> <p>25 THE COURT: Go ahead. Take a second. Write it down</p>	<p style="text-align: right;">Page 17</p> <p>1 purpose behind those orders was to clarify the particular</p> <p>2 Defendants against who each Plaintiff asserts a claim.</p> <p>3 And the Court clearly said that if those Fact Sheets</p> <p>4 showed that one of those Plaintiffs had a claim against a non-</p> <p>5 diverse Defendant, then that case ought to be remanded. And we</p> <p>6 went back and looked at those Fact Sheets with regards to these</p> <p>7 later filed cases, we came down to first off, finding 64</p> <p>8 Plaintiffs that either failed to file a Fact Sheet at all or</p> <p>9 failed to complete a Fact Sheet. They may have one, but it</p> <p>10 wasn't completed.</p> <p>11 And you know, your Honor, dealt with that in Order</p> <p>12 29, in which you said, "Because we don't have any information,</p> <p>13 then it's the Defendant's burden to show jurisdiction. That the</p> <p>14 assumption is that there is not jurisdiction in these type of</p> <p>15 cases and the Defendants have the burden to show there is</p> <p>16 jurisdiction. That with regard to the Fact Sheets that are</p> <p>17 either not filed or not completed, then we can't show that there</p> <p>18 is a claim against those Defendants and so, therefore, those</p> <p>19 cases should be remanded."</p> <p>20 With regard to all the other Fact Sheets, we came</p> <p>21 down to finding only one person out of those cases and that was</p> <p>22 in the McManus case that appeared to have, based on the Fact</p> <p>23 Sheet, diversity. And that was a Wisconsin resident, who was</p> <p>24 exposed -- allegedly exposed to Silica in Wisconsin. And</p> <p>25 probably that specific -- it's a guy named Mr. Winston.</p>

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1 With regard to that Fact Sheet, still the Fact Sheet
 2 didn't identify the specific Defendants against who he had
 3 claims, so we say it should be remanded as well, but that's the
 4 only person that we saw that could have an arguable basis for
 5 diversity jurisdiction based on our review of the Fact Sheets
 6 and that's one Plaintiff in McManus. With regard to that one
 7 Plaintiff, we would say that, you know, this Court has
 8 recognized in certain other unique situations in which you've
 9 got -- like the Kirkland case, in which you had one Plaintiff
 10 who needed to go back to somewhere else where it would be more
 11 convenient, the Court asked that it be remanded to the Northern
 12 District of Georgia. 3M would ask that that Wisconsin case be
 13 remanded to an appropriate forum in Wisconsin.

14 But that's the only one out of the remaining cases
 15 in which we filed Motions to Remand that we found somebody that
 16 arguably would have diversity.

17 Now the opposition has been filed for our Motion to
 18 Remand from Mr. Krutz's clients. He is going to -- he requested
 19 that they do depositions, and use depositions in order to
 20 establish jurisdiction.

21 THE COURT: You just want to get them back to
 22 Mississippi where you've already got a Summary Judgment against
 23 them; am I correct?

24 MR. MANUEL: Well, I don't know that -- we don't
 25 have anything yet down there, but yeah, we believe that these

1 on those cases and the Court specifically in your Order -- as a
 2 matter of fact, in Pages 207 through 209, addressed those
 3 Requests for Depositions. And in that you said that first off,
 4 there's a problem with time and the fact that you've got
 5 numerous depositions at that time. In this case -- I mean, here
 6 it's a lesser amount of depositions, but you've still got,
 7 according to Forman Perry's Opposition, still 536. Now I
 8 understand that's before some of these latest dismissals, but
 9 it's still going to take a long time to go through and do
 10 depositions based on jurisdiction.

11 But more significant, the Court addressed two
 12 problems with the deposition process that I think still apply to
 13 these later removed cases. First of all, the Court went back to
 14 point out that the Federal Court has to assume that there's no
 15 jurisdiction, that the burden is on the Defendants. And by
 16 placing this deposition process in place, you may be switching
 17 the burden to the Plaintiffs to have to prove that there is no
 18 jurisdiction and that that's not proper.

19 And finally, your order made the point that it's
 20 still speculation that these depositions are even going to show
 21 that these people are going to come forth and say they don't
 22 have a claim against a non-diverse Defendant because we thought
 23 that's what the Fact Sheets were for, was to show who they were
 24 suing. And so we came in here and said, "Well, we ought to look
 25 at the Fact Sheets." And if the Fact Sheets aren't accurate,

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1 cases do belong back to Mississippi, and we believe that the
 2 Fact Sheets, which this Court has recognized as an adequate way
 3 to look at jurisdiction --

4 THE COURT: Well, I suppose anybody can raise
 5 jurisdiction at any time. Either it's there or it isn't.

6 MR. MANUEL: And I imagine that's what the case law
 7 will say.

8 THE COURT: And just because you joined in the
 9 removals of all these, I guess doesn't bar you from later say,
 10 "never mind."

11 MR. MANUEL: Well, after we got Fact Sheets that
 12 showed, you know, differences and more adequately explained --
 13 I'm trying not to struggle with what I'm trying to say, but the
 14 specific --

15 THE COURT: I know it's a struggle.

16 (Laughter)

17 MR. MANUEL: With more specific allegations against
 18 those Defendants. When you actually said, "You've got to" --
 19 "It's time for you to actually show who you are suing," and they
 20 did that, then we showed that it was not -- there was not
 21 complete diversity. And so that's why we raised the
 22 jurisdictional motion at that time.

23 The problem with depositions, your Honor, you
 24 addressed this in Order 29. We had the same issue with those
 25 other cases that came up. There was a request to do depositions

1 then it may be that the Fact Sheets aren't accurate, but your
 2 Honor said in your order that the appropriate form for deciding
 3 what to do about inaccurate Fact Sheets is a Court with
 4 competent jurisdiction, which we would argue would be the courts
 5 in Mississippi. And we can definitely cross examine people and
 6 bring Motions for Sanctions and do all that kind of stuff in
 7 that court and there won't be any kind of question as to whether
 8 those orders would be valid.

9 So that's why we don't believe that depositions are
 10 appropriate relief to solve this jurisdictional problem. We
 11 think that the Court ought to do exactly what it did in Order
 12 29, use the Fact Sheet analysis. And in the cases that we've
 13 laid out in our motions show that there is not diversity --

14 THE COURT: Do you want me to be -- your argument is
 15 going to be consistent even though I'm not competent?

16 MR. MANUEL: Consistent? We think that you're
 17 competent in cases that are properly before you, but we just
 18 don't -- but we would ask that you be consistent and that's --

19 THE COURT: All right. Thank you.

20 MR. MANUEL: That's it.

21 THE COURT: I may go ahead and do the depositions
 22 quickly. You've got -- the argument that Mr. Krutz's clients
 23 have is that every time you noted -- 400 out of 900 or
 24 something, you noticed depositions and 400 -- they dismissed 400
 25 plaintiffs.

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1 MR. KRUTZ: Well, we didn't notice 400 depositions,
2 but every deposition we noticed so far have been dismissed and
3 since we have made it known to the Plaintiff lawyers that we
4 were going to ask you to let us depose those people, they have
5 agreed to dismiss over half of the cases and have implied that
6 more dismissals may be coming.

7 So what we would like to do, your Honor -- first of
8 all, that's the first time in this two years we've been here
9 that I've heard any Defendant say in written paper or from the
10 podium that they think there's any accuracy in those Fact
11 Sheets.

12 MR. MANUEL: Well, I'm not necessarily saying that.

13 MR. KRUTZ: You know, so I think you noticed along
14 in Order 29 that it was understandable we were suspicious about
15 the accuracy of the Fact Sheets and I think you also said that
16 we were entitled to discovery to try to meet our burden of
17 proving subject matter jurisdiction and that we were here today
18 for the purpose of coming up with a procedure that would
19 expedite that procedure.

20 THE COURT: For the cases I have left.

21 MR. KRUTZ: Exhibit --

22 THE COURT: Only for the ones that I've got left.

23 MR. KRUTZ: Yeah, those are done and gone.

24 THE COURT: Uh-huh.

25 MR. KRUTZ: And so what we want to do, your Honor,

1 was over 400 of the Plaintiffs in it. That as I understand it,
2 his Fact Sheets aren't even due until the end of this week, so
3 we don't even have the Fact Sheets yet. I think that's correct,
4 in fact.

5 MR. MCMURTRAY: Good morning. Patrick McMurtray for
6 the Plaintiffs in this.

7 That is correct. Plaintiff's Fact Sheets are not
8 yet due, although we have been filing them piecemeal. And we
9 also just on Friday, I believe, provided Mr. Krutz's office at
10 least 26 of those plaintiffs who those cases can be dismissed
11 and so we're working with his office on that.

12 THE COURT: So when you get them Friday, you can
13 notice depositions over the next couple of weeks.

14 MR. KRUTZ: We will do that, your Honor.

15 MR. MANUEL: Your Honor, my client will --

16 THE COURT: Object -- strongly object.

17 MR. MANUEL: That's right. That's right.

18 THE COURT: I'll put down that you --

19 MR. MANUEL: We just believe that --

20 THE COURT: -- that you fought. They had to carry
21 you out kicking and screaming.

22 (Laughter)

23 MR. MANUEL: That would be correct, your Honor. We
24 just do believe that after the deposition process, we're going
25 to come back and we're going to come back and we're going to be

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1 is first, we're working with some as we have the last weeks on
2 the Plaintiff lawyers to get these cases dismissed, as many as
3 possible. When that dust clears, we believe that we're going to
4 have a number of cases that we can easily do that we demand
5 related discovery on.

6 THE COURT: Well, I'm going to need a time limit on
7 that.

8 MR. KRUTZ: I figured you would.

9 THE COURT: A day, two days?

10 MR. KRUTZ: To do the depositions?

11 THE COURT: Why don't you just do --

12 MR. KRUTZ: We've got enough people here.

13 THE COURT: Why don't you just do one big Notice of
14 Deposition and notice them all for a certain week and see what
15 happens.

16 MR. KRUTZ: We'll do it.

17 THE COURT: Wouldn't that save you time and money
18 and everybody else and either they show up or they don't, one
19 after another. Do them in order. Give them a list, and those
20 are to be produced in that order.

21 MR. KRUTZ: We'll do that, your Honor.

22 Now as I understand it, one of the cases --

23 THE COURT: 30 days?

24 MR. KRUTZ: I'm sorry. Adams, one of the cases and
25 I've been talking to Mr. McMurtray. One of the cases, Adams,

1 in the same situation we were before --

2 THE COURT: Well, let's see.

3 MR. MANUEL: -- but then we have all these people --

4 THE COURT: Let's see. I mean, if what Mr. Krutz
5 says is correct, they all claim -- many of them are going to go
6 away.

7 MR. MANUEL: Can we have the opportunity before
8 depositions actually start, once we get this -- if they notice
9 them and we get these dismissals, can we have an opportunity to
10 be heard on whether actual depositions need to go forward before
11 they actually do?

12 THE COURT: I'm going to keep the same rules in
13 effect and Mr. Krutz's clients can notice the depositions. The
14 plaintiffs, if you've read all the orders -- I'm going to assume
15 all the Plaintiff's Attorneys that are in these 17 cases have
16 read all of the orders that apply to you.

17 MR. MCMURTRAY: Yes, your Honor.

18 THE COURT: And that means at time of deposition,
19 you have to know -- you have to give everybody notice well in
20 advance of what defendants you actually have a cause of action
21 against.

22 MR. MCMURTRAY: Yes, your Honor.

23 THE COURT: And I think that may shake you out a lot
24 of the problems that you're concerned about.

25 MR. MANUEL: We're just concerned --

7 (Pages 22 to 25)

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1 THE COURT: And I'm not trying to keep jurisdiction
2 over something I don't have jurisdiction over, except sometimes
3 I do. I think it may be somewhat more efficient for everybody
4 to do it this way. And I understand your argument. It's a good
5 argument, and it was very well presented.

6 (Laughter)

7 MR. MANUEL: Thank you, your Honor.

8 MR. ATWOOD: Your Honor, on the Adams case --

9 THE COURT: Yes, sir. Just one moment.

10 Go ahead. Yes, sir?

11 MR. ATWOOD: On the Adams case, Roy Atwood, your
12 Honor.

13 The Adams case is unique. It's a Western District
14 of Kentucky case. It has Defendants in it that are not
15 otherwise involved in this MDL and if the Court wants to
16 entertain discussion on the Adams case at this point, I'd like
17 to show the Court some facts from the Fact Sheets that we have
18 been provided by Plaintiffs that I think bears on your decision
19 with what to do with that case.

20 (Pause)

21 THE COURT: Unless you want me to treat it
22 differently, I'm putting it with the same group that's going to
23 be deposed.

24 MR. ATWOOD: I do, your Honor.

25 THE COURT: Okay. Go ahead.

1 THE COURT: Okay. Go ahead.

2 MR. ATWOOD: Your Honor, what you have in this case
3 are 451 plaintiffs. We've gotten 306 Fact Sheets. We have zero
4 diagnoses of silicosis on the Fact Sheets. The B-Reads were all
5 performed by Dr. Ballard with consistent language --

6 THE COURT: All 451 or the 306 that are --

7 MR. ATWOOD: 306. We don't know about the --

8 THE COURT: Okay. Who is the Plaintiff's attorney
9 for Adams?

10 MR. MCMURTRAY: I am, your Honor. Patrick
11 McMurtray.

12 THE COURT: Where are the fact sheets? Are those
13 the ones -- are they due Friday or are they already due?

14 MR. ATWOOD: They are due -- the rest are due
15 Friday.

16 MR. MCMURTRAY: Yes, your Honor.

17 THE COURT: And 306 Fact Sheets with zero diagnosis;
18 is that right?

19 MR. MCMURTRAY: The B-Read language is correct.
20 There is --

21 THE COURT: No. Has anybody diagnosed those 306
22 with silicosis?

23 MR. MCMURTRAY: No, your Honor, other than what Dr.
24 Ballard has said in his B-Reads.

25 THE COURT: Okay. So you agree to dismiss those 306

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1 MR. ATWOOD: The problem that we have in that case
2 and these folks are from Kentucky and represent some of the
3 Defendants in this case as well, you have non-diverse non-
4 consenting Defendants who are only -- who are sand suppliers,
5 distributors in Kentucky whose only involvement in this MDL is
6 this case. And under your standing orders in the MDL, they
7 would have an obligation to do disclosures that pending the
8 decision on jurisdiction, when they didn't consent to remand or
9 they didn't consent to removal, they quite frankly want this
10 case back in State Court.

11 The Fact Sheets that have been filed, your Honor,
12 are --

13 THE COURT: I am -- I should have remembered that.
14 I'm not -- of all these remaining cases, I'm not going to order
15 the Defendant to make any disclosures until after the
16 Plaintiff's depositions.

17 MR. ATWOOD: Okay.

18 THE COURT: Does that take care of some of your
19 concern?

20 MR. ATWOOD: Well, it takes care of some of my
21 concerns, but your Honor --

22 THE COURT: Well, does anybody in that case, in the
23 Adams case, object to remand? Anybody? Any Defendant? Any
24 Plaintiff?

25 MR. KRUTZ: Yes, your Honor. We do.

1 without prejudice?

2 MR. MCMURTRAY: Your Honor, I'm happy to discuss
3 that with the Defendants, but at this point --

4 THE COURT: You need to discuss it with me right
5 now.

6 MR. MCMURTRAY: Okay. Well, then, your Honor, if
7 you -- obviously you --

8 THE COURT: Okay. Unless you disagree, the premise
9 for all the Plaintiffs, every Plaintiff's case other than I've
10 not asked the Plaintiff's attorneys in these other 70 cases, the
11 premise for all the Plaintiffs is that they all agreed when they
12 came in that they have not -- that they do not have a cause of
13 action unless they have a diagnosis of silicosis.

14 Does any other Plaintiff Attorney disagree with
15 that?

16 MR. HOOPER: Your Honor, I must not. I have raised
17 several times to advise the Court that I don't agree with that.

18 THE COURT: Actually you haven't.

19 MR. HOOPER: Yes. I have.

20 THE COURT: Okay.

21 MR. HOOPER: It's on the record.

22 THE COURT: Okay. You think that your clients don't
23 have to have silicosis to have a cause of action right now?

24 MR. HOOPER: I clearly argued during the February
25 hearing that Plaintiff's individuals --

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 THE COURT: Not in the February hearing, but before 2 that. Did you ever raise it before the February hearing? 3 MR. HOOPER: I'd have to go back and look at the 4 record. 5 THE COURT: I think you best do that. Thank you. 6 MR. HOOPER: Well, I'll say again, your Honor, that 7 individuals who have exposure to silica in significant 8 quantities who do not yet have a diagnosis of silicosis have an 9 injury that's recognized at law. Everybody who's ever studied 10 this, every scientist, every doctor, would agree with that. 11 THE COURT: All right. That was -- you have never 12 said that until the February hearing when your Plaintiffs were 13 going down. 14 MR. HOOPER: No, your Honor. I don't think that 15 that's true. 16 THE COURT: I think you need to go find that in the 17 record because I can assure you that everyone stood up here when 18 we first started this case, including you, and said, "I agree. 19 Every one of my Plaintiffs first have a diagnosis of silicosis, 20 and we agree that without a diagnosis of silicosis, they have no 21 cause of action at this time." 22 You said it. In fact, Mr. Basile, would you find 23 that in the record, please? 24 (Pause) 25 Yes, sir?</p>	<p style="text-align: right;">Page 32</p> <p>1 dismiss 26. I provided 313 Fact Sheets. 2 THE COURT: And that could be some of those 306 or 3 not? 4 MR. MCMURTRAY: Well, I don't believe so. I believe 5 that there is 313 sent of the 447. 26 have already been 6 provided to Forman Perry above and beyond that as cases that 7 should be dismissed and then that left me with 108 Plaintiffs 8 whose Fact Sheets have not yet been filed, which are not yet 9 due. 10 THE COURT: Okay. 11 MR. MCMURTRAY: I believe, your Honor. 12 MR. ATWOOD: Perhaps the question, your Honor, is 13 are the Facts Sheets that are going to be filed between now and 14 next Friday going to have diagnosis of silicosis, because if 15 they're just like the 306 we've gotten, then we can deal with 16 this whole thing at once in a week. 17 THE COURT: I'm not going to rule in advance, but I 18 mean -- 19 MR. MCMURTRAY: And I believe so, your Honor, but I 20 don't know. I'm not prepared because those Fact Sheets haven't 21 been finalized. 22 THE COURT: You don't have them. 23 MR. MCMURTRAY: And in addition, I would expect that 24 a number of those 108 will ultimately be dismissed. These are 25 people who have trailed along in the Fact Sheet process, so I</p>
<p style="text-align: right;">Page 31</p> <p>1 MR. MCMURTRAY: Yes, your Honor. I understand what 2 you're saying correctly that you ruled before that a simple B- 3 Read without a diagnosis is not a cause of action, did not start 4 the cause of action. 5 THE COURT: That's why it's called a "screening." 6 MR. MCMURTRAY: Then, yes, your Honor, I would agree 7 that those cases should be dismissed. 8 THE COURT: All right. 9 MR. MCMURTRAY: Without prejudice. 10 THE COURT: So that's 306 I grant that dismissal 11 without prejudice. You just need to get me the names. Then you 12 have what? 94 left or -- that did not have Fact Sheets? 13 MR. ATWOOD: Well, 100 and -- well, you just 14 dismissed some, so... 15 MR. MCMURTRAY: Well, my numbers are a little bit 16 different than his, your Honor. 17 THE COURT: Okay. 18 MR. MCMURTRAY: And I don't know who is right. I 19 show 447 Plaintiff's listed. 20 THE COURT: 447? Well, you ought to know. 21 MR. MCMURTRAY: Well, I should, but he has an 22 overhead and I don't, your Honor. 23 (Laughter) 24 I'm always impressed by preparation. My Post-It 25 says, "447" at the top and of those I've already agreed to</p>	<p style="text-align: right;">Page 33</p> <p>1 would expect at least half of those to have been dismissed 2 anyway, but I don't know the answer. 3 MR. ATWOOD: Then we'll file a Proposed Order based 4 on these 306 we have the Fact Sheets on at this point and we'll 5 follow that up with an order -- 6 THE COURT: Okay. 7 MR. ATWOOD: -- once the rest of the Fact Sheets are 8 turned in. 9 MR. KRUTZ: Your Honor, this is what we were trying 10 to point out by saying based on our discussion with Mr. 11 McMurtray and other Plaintiff lawyers, we believe a lot of these 12 cases are about to go away by dismissals and that's why we would 13 prefer not -- for you not to remand anything until we've had an 14 opportunity to either get agreements from them to dismiss the 15 cases because of facts like this, or take some of the 16 depositions of the few people that will be remaining. 17 THE COURT: Well, I just remanded Wilson versus 3M 18 MR. KRUTZ: Yes, ma'am. 19 THE COURT: That's a single Plaintiff case and 20 everybody agreed to remand it. Nobody stood up to disagree. 21 I understand your position on the other cases. I'm 22 not addressing any remands at this time. 23 I'm going to carry that motion -- those motions 24 forward for 60 days. 25 (Pause)</p>

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1 That leaves Covey versus Union Pacific to do a
2 Scheduling Order, and let's do that at the end. And I think
3 that takes care of everything in the Exhibit B cases, the still
4 pending cases, except for Alexander versus Air Liquide.

5 MS. SNAPKA: Your Honor, Mr. Laminack's office
6 indicated that they received their -- the motion on the 10th and
7 would request their full 20 days to respond.

8 THE COURT: No. We're going forward with that
9 today.

10 Is Laminack -- O'Quinn Laminack?

11 MS. SNAPKA: He's here.

12 MR. LAMINACK: Rick Laminack, your Honor, for
13 Alexander.

14 THE COURT: Have you all paid your sanction?

15 MR. LAMINACK: My sanction? We were discussing that
16 with Mr. Barger this morning. My understanding is yes. He
17 tells me his office has not yet received it. I asked that it be
18 sent over a month ago. I signed a check personally. I even got
19 Mr. Barger's bank account number so I could send it.

20 THE COURT: Did you want to give it to everybody
21 else?

22 MR. BARGER: I went to Europe.

23 (Laughter)

24 THE COURT: Well, there you have it, Mr. Laminack.

25 MR. BARGER: We did talk a month ago. He said he

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1 MR. COHEN: Yes, your Honor. Joe Cohen for American
2 Optical.

3 And also, your Honor, I note that Mr. Watts filed a
4 Motion to Remand in the Thirsty case in which he said three of
5 the Defendants are Mississippi citizens, in which case if that's
6 so, there couldn't be complete diversity since all the
7 Plaintiffs in this case, or many of them, are from Mississippi.
8 And I'm referring specifically to the -- I don't have the docket
9 number, but it is the Motion to Remand filed in Thirsty, Moore,
10 Large, Greer, and Crowe, in which he says in paragraph --
11 Section E on Page 10, with Kelco (phonetic), Quickfree
12 (phonetic) to Mississippi Valley are Mississippi citizens and if
13 that's so, there isn't complete diversity.

14 THE COURT: Pardon?

15 MR. COHEN: I said if that's so, there is not
16 complete diversity.

17 THE COURT: Right. Thank you.

18 Did you want to talk about Air Liquide, in the
19 Alexander versus?

20 MR. COHEN: Your Honor, you've raised precisely the
21 point that we make and that is on the face --

22 THE COURT: It's a mess.

23 MR. COHEN: -- of the Second Amended Complaint, it
24 not demonstrating diversity.

25 THE COURT: It went back to the First Complaint,

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1 was sending it out that day. We're checking on it now, Judge.
2 Obviously, it's not an issue.

3 THE COURT: All right.

4 MR. LAMINACK: And your Honor on this --

5 THE COURT: Well, let me talk to you about the
6 Alexander versus Air Liquide. If you could take just a moment
7 and pull out the first Petition, the First Amended Petition and
8 the Second Amended Petition?

9 The First Amended Petition did not have proper
10 jurisdictional allegations because citizenship was not pled.
11 Second Petition had proper allegations of citizenship for
12 everybody but one Defendant, and I said, "Please take care of
13 that."

14 The Second Amended Petition was filed and you went
15 back and filed -- somebody did -- filed the First Petition again
16 with no allegations of citizenship, so it's a mess. If you
17 could just take a minute to pull those three Petitions out and
18 look at them and tell me what you want to do with them, we'll
19 come back to that. But I have a feeling you couldn't possibly
20 have looked at those yet.

21 MR. LAMINACK: I haven't seen them and you're
22 probably right, your Honor.

23 THE COURT: So if you could look at those, I would
24 appreciate it.

25 Is that what you want to talk about?

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1 which was the worst one of all.

2 MR. COHEN: It appears that way. They have failed
3 to allege principal place of business for the Defendants, and
4 Statesman Corporation demonstrate diversity.

5 THE COURT: And that's why I wasn't inclined to give
6 them their 20 days because they've had a year on that same
7 position.

8 MR. COHEN: This is the third time, your Honor.

9 THE COURT: It didn't apply the first time and it's
10 not doing well the second time.

11 MR. COHEN: Correct.

12 THE COURT: All right. Thank you, sir.

13 Yes, sir?

14 MR. MULHOLLAND: Your Honor, Danny Mulholland.

15 I was going to comment on the AO motion. As you
16 know, I'm sure, in Pretrial Order 29, you suggested a procedure
17 for dealing with AO's objection to subject matter jurisdiction,
18 which was a dismissal of American Optical under 1653 and of
19 course, there's the other issues you've raised as to
20 jurisdiction.

21 THE COURT: Well, I'm going to give Mr. Laminack a
22 chance to look at those three petition and figure out -- it's
23 American Optical that had the problem with -- that was not
24 properly pled in the Second Petition and First Amended Petition
25 right?

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 MR. MULHOLLAND: I believe that's correct, your 2 Honor. 3 MR. COHEN: I believe the First Amended was the last 4 live pleading before the -- 5 THE COURT: Before the messed up one, before the one 6 -- before it reverted back to the original mess. 7 MR. COHEN: That's what it appears to be, your 8 Honor. 9 THE COURT: So I'll come back to that issue. 10 So Roman Numeral II, we have discovery motions, 11 Motions to Dismiss for Failure to Comply with Discovery Orders. 12 I don't think I have any jurisdiction to do anything 13 about that. 14 MR. MULHOLLAND: Your Honor, I think you do. And 15 there are -- you have to look at this motion through -- 16 THE COURT: Okay. For failure to comply with my own 17 discovery motions and orders. 18 MR. MULHOLLAND: Actually it's easier than that. 19 We're talking -- I'm going to filter through your Motion to 20 Remand and put all those cases over here and just talk about 21 what cases are still before you. 22 THE COURT: The 17. 23 MR. MULHOLLAND: The 17, plus Alexander. Now we can 24 talk about Alexander in more detail later, if that's what the 25 Court would like.</p>	<p style="text-align: right;">Page 40</p> <p>1 Go ahead. 2 MR. MULHOLLAND: The McManus case, it started out 3 with 60-some-odd Plaintiffs and I think by the end of the 4 motions this morning, the Agreed Motions, we'll be down to 29. 5 Just last week, we had 22 Fact Sheets on file, seven of those 6 Plaintiffs did not have Fact Sheets. We got in the remaining 7 seven Fact Sheets last week, but they're unsigned. 8 Our particular problem with those 29 Fact Sheets, if 9 you count the seven unsigned ones, is this: We don't have any 10 of the screening information and the -- 11 THE COURT: I'm sorry. I wasn't following you. 12 Which case was that? McManus? 13 MR. MULHOLLAND: McManus. 14 THE COURT: Okay. 15 MR. MULHOLLAND: There are going to be 29 Plaintiffs 16 remaining. Of those, we have 22 Fact Sheets, seven of which we 17 received last week and they are unsigned. 18 THE COURT: Who's the Plaintiff's Attorney for 19 McManus? 20 MR. CANSLER: Here, your Honor. Jason Cansler for 21 the Plaintiffs. 22 THE COURT: They have to be signed as an Affidavit. 23 MR. CANSLER: I'm sorry. I didn't hear your Honor? 24 THE COURT: How many are unsigned? 25 MR. MULHOLLAND: Seven.</p>
<p style="text-align: right;">Page 39</p> <p>1 THE COURT: No. You can do that now, but I don't 2 want Mr. Laminack having to do two things at one time. 3 MR. LAMINACK: I'm ready, your Honor. 4 THE COURT: You're ready? Okay. 5 MR. MULHOLLAND: The -- 6 MR. LAMINACK: Or I should say, somebody else is 7 looking at the petitions. 8 THE COURT: Thank you. 9 MR. MULHOLLAND: With respect to the McManus case, 10 which was one of the Exhibit B cases, there are after, what I 11 believe to be an Agreed Motion to Dismiss some Plaintiffs -- 12 THE COURT: Speaking of Alexander, too, Mr. 13 Laminack, you -- and we'll get to this later, but you have 14 substituted in -- tried to substitute in, new diagnoses. You've 15 got 100 Plaintiffs in there and only 86 have a new diagnoses. 16 MR. LAMINACK: Correct. 17 THE COURT: So do you want to dismiss the other 14? 18 MR. LAMINACK: No. 19 THE COURT: What happened to them? 20 MR. LAMINACK: Nothing yet. 21 THE COURT: Well, I think that's why they get 22 dismissed if there's nothing wrong with them. 23 MR. LAMINACK: I understand, your Honor. 24 THE COURT: Okay. Unless you disagree with that? Do 25 you think -- never mind.</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. CANSLER: Seven and -- 2 THE COURT: What's the problem? 3 MR. CANSLER: I would assume that it was just client 4 error, your Honor. I don't think there's -- 5 THE COURT: Client error? 6 MR. CANSLER: But we sent these things to them, 7 talked to them, and specifically tell them to sign them -- 8 THE COURT: Didn't you read them? 9 MR. CANSLER: I think that was left to another 10 lawyer in the firm, which I would assume that they did and I 11 would hope that they would be a little bit more thorough, but it 12 looks like there's a mistake, your Honor. 13 THE COURT: Well, I don't think you should call it 14 "client error." 15 Many of these cases that I remanded, they may have 16 only one cause of action and it's not against the Defendants. 17 So when are you going to get those ready? 18 MR. CANSLER: Those seven, your Honor? 19 THE COURT: Yes. 20 MR. CANSLER: Immediately. As soon as we can get 21 back to the office, we will call the seven clients. I'm sure 22 Mr. Mulholland will be happy to give me the names of the seven 23 unsigned sheets. 24 THE COURT: You don't know which seven are unsigned? 25 MR. CANSLER: Your Honor, I do not know off the top</p>

<p style="text-align: right;">Page 42</p> <p>1 of the my head know which seven are unsigned. 2 THE COURT: You'd rely on Mr. Mulholland to tell you 3 how to clean up your case? 4 MR. CANSLER: No, ma'am. I can always call Alice 5 Coleman in our Mississippi office to do that. I just -- he was 6 just standing right here so I thought I'd ask him. 7 THE COURT: And how many Plaintiffs did you start 8 out with McManus? 9 MR. CANSLER: 67, I believe, your Honor. 10 THE COURT: And you're down now to 29 Plaintiffs? 11 MR. CANSLER: That's correct. 12 THE COURT: Did you dismiss the others? 13 MR. CANSLER: There's an Agreed Motion to Dismiss 14 before the Court. 15 THE COURT: Have you got that with you? 16 MR. CANSLER: I do. Would you like it? 17 THE COURT: Please. 18 MR. MULHOLLAND: I believe there were 61 plaintiffs 19 to start out and we'll be down to 29. 20 THE COURT: Sorry. 21 MR. CANSLER: May I approach, your Honor? 22 THE COURT: Yes, sir. Thank you. 23 (Pause) 24 Do we have -- how many Defendants do you have? 25 MR. CANSLER: I'm sorry?</p>	<p style="text-align: right;">Page 44</p> <p>1 THE COURT: And that is, of course, a requirement to 2 appear for your clients. 3 This order only dismisses Lockheed Martin. You 4 haven't -- and the Plaintiffs. Do you have an order that 5 dismisses the -- 6 MR. COHEN: I have it as to without prejudice. 7 THE COURT: The 32 plaintiffs? 8 MR. COHEN: The 32 Plaintiffs right here also. 9 THE COURT: Okay. Give me that. 10 Anyone oppose this Order Dismissing without 11 Prejudice, the 32 Plaintiffs? 12 MR. MULHOLLAND: No, your Honor. 13 THE COURT: As to all Defendants. 14 Okay. That's granted. So you have 29 Plaintiffs 15 left and 20 -- and those seven have not -- seven of them have 16 not filed Fact Sheets in a timely manner; is that right? 17 MR. COHEN: I think they were filed somewhat 18 untimely, your Honor. That's correct. 19 THE COURT: Do you have 29 Fact Sheets, Mr. 20 Mulholland? 21 MR. MULHOLLAND: Yes. We have -- yes, that's 22 correct, your Honor, seven of which are unsigned. 23 THE COURT: Okay. So the 29 remaining have filed 24 some type of Fact Sheets, seven are unsigned. 25 MR. MULHOLLAND: Correct. And there's an additional</p>
<p style="text-align: right;">Page 43</p> <p>1 THE COURT: How many Defendants? 2 MR. CANSLER: I don't have that count right in front 3 of me, your Honor. I'll take a guess, but I would think no more 4 than 35. That would be typical. 5 And I apologize, your Honor. I'm not the lead 6 attorney. The lead attorney, Alice Coleman, is with child and 7 could not fly to be here, so I apologize. 8 THE COURT: So you're not familiar with the case? 9 MR. CANSLER: No. I'm not saying that. I'm just 10 not the lead attorney. 11 THE COURT: But you don't know how many Defendants 12 or how many Plaintiffs or -- 13 MR. CANSLER: Well, those things -- 14 THE COURT: Those minor problems? 15 MR. CANSLER: I'm sorry? Yes, ma'am. 16 MR. MULHOLLAND: Your Honor, I'm told that there are 17 105 Defendants in the case. 18 THE COURT: Do you have any attorney from your firm 19 that's familiar with the case? 20 MR. CANSLER: Alice Coleman would be the most 21 familiar with the case, your Honor. 22 THE COURT: But you are not? 23 MR. CANSLER: No. 24 THE COURT: Apparently. 25 MR. CANSLER: Apparently not.</p>	<p style="text-align: right;">Page 45</p> <p>1 problem with those 29 Fact Sheets. 2 THE COURT: And what is that? 3 MR. MULHOLLAND: We're aware, based on our own 4 research -- 5 THE COURT: Sir, do you agree that your Plaintiffs 6 have to have a diagnosis of -- have to have silicosis to have a 7 cause of action? 8 MR. CANSLER: Yes, ma'am. 9 THE COURT: Okay. Do they have a diagnosis of 10 silicosis, Mr. Mulholland, in the 22 with the signed Fact Sheets 11 or the 29, including the unsigned Fact Sheets? 12 MR. MULHOLLAND: Well, facially, they appear to, 13 your Honor. 14 THE COURT: Who did the diagnosis? 15 MR. MULHOLLAND: Dr. Segara, but we're going to have 16 real big problems and they're markedly different from what the 17 Court saw in February regarding Dr. Segara's work. So that's 18 going to be the next -- or another issue that's going to loom in 19 the near future. It's a completely different view on Dr. -- 20 THE COURT: It's different than what he testified to 21 is what you're saying? 22 MR. MULHOLLAND: Yes, your Honor. 23 THE COURT: In what fashion? 24 MR. MULHOLLAND: Well, as the Court may recall, Dr. 25 Segara testified he always did his own B-Reads.</p>

<p style="text-align: right;">Page 46</p> <p>1 THE COURT: He was a friendly witness to the</p> <p>2 Defendant, as I recall.</p> <p>3 MR. MULHOLLAND: In that proceeding --</p> <p>4 THE COURT: In that proceeding.</p> <p>5 MR. MULHOLLAND: There will be further proceedings.</p> <p>6 He testified that he almost always -- I think all but -- he said</p> <p>7 maybe one occasion did his own reading of X-rays. We now</p> <p>8 have --</p> <p>9 THE COURT: And he saw the clients in particular and</p> <p>10 examined them and took either -- he or under his direct</p> <p>11 supervision, the exposure history, along with the medical</p> <p>12 history.</p> <p>13 MR. MULHOLLAND: Right. We have a number of reports</p> <p>14 filed in this case where he has not done that.</p> <p>15 THE COURT: Have you talked to Dr. Segara about</p> <p>16 this?</p> <p>17 MR. MULHOLLAND: Not yet, your Honor, but we're</p> <p>18 looking for an occasion to. And we would like the opportunity</p> <p>19 to bring Dr. Segara back.</p> <p>20 THE COURT: Would you like to visit with him here?</p> <p>21 MR. MULHOLLAND: We would love to visit with him</p> <p>22 here.</p> <p>23 THE COURT: That's no problem. My court is your</p> <p>24 court, as you know.</p> <p>25 (Laughter)</p>	<p style="text-align: right;">Page 48</p> <p>1 THE COURT: I don't know what you mean you'll take</p> <p>2 care of it.</p> <p>3 MR. CANSLER: We're going to make sure that he's</p> <p>4 ready to go here for this case. It's kind of an inconvenience</p> <p>5 with the Wisconsin Plaintiff being in a Mississippi case. It's</p> <p>6 our biggest concern.</p> <p>7 THE COURT: Well, are you dismissing that Wisconsin</p> <p>8 Plaintiff?</p> <p>9 MR. CANSLER: Potentially. I can't say that right</p> <p>10 now for sure. He's going to get some additional medical relief</p> <p>11 there.</p> <p>12 THE COURT: Is it Segara or Segura?</p> <p>13 MR. MULHOLLAND: Segara.</p> <p>14 THE COURT: Segara. Now -- oh, you know in the --</p> <p>15 in some of the remaining 17, Nix, Douglas, Jackson, and Green,</p> <p>16 you need to enter an order clarifying -- even though I don't</p> <p>17 hear anybody objecting to jurisdiction -- well, there are</p> <p>18 motions to remand. I need to clarify the citizenship of the</p> <p>19 Defendants.</p> <p>20 In Nix, Douglas, Jackson and Green, I'm going to</p> <p>21 give you two weeks -- Plaintiffs attorneys two weeks to do</p> <p>22 that.</p> <p>23 MR. SMITH: Your Honor, I'm Allen Smith. I</p> <p>24 represent the Plaintiffs.</p> <p>25 THE COURT: In?</p>
<p style="text-align: right;">Page 47</p> <p>1 The Plaintiffs and the Defendants, any time you want</p> <p>2 it, it's yours.</p> <p>3 Yes, sir. Have you talked to Dr. Segara about this</p> <p>4 diagnoses?</p> <p>5 MR. CANSLER: No, ma'am. I have not. Not about the</p> <p>6 -- I've talked to Dr. Segara quite a bit, but not about these</p> <p>7 particular issues before this Court, no, ma'am.</p> <p>8 THE COURT: Did he examine all these patients?</p> <p>9 MR. CANSLER: It's my understanding if he did a full</p> <p>10 examine, that he did examine all the patients, at least that's</p> <p>11 what we request that he did.</p> <p>12 THE COURT: And he's -- where is he located?</p> <p>13 Mississippi?</p> <p>14 MR. CANSLER: Yes, ma'am.</p> <p>15 THE COURT: And all your clients are Mississippi?</p> <p>16 MR. CANSLER: Yes, ma'am. Other than the Wisconsin</p> <p>17 Plaintiff, which we're currently taking care of.</p> <p>18 THE COURT: What do you mean, "taking care of?"</p> <p>19 MR. CANSLER: We're in correspondence with him. I</p> <p>20 think it was just a mistake by, frankly, our office that a</p> <p>21 Wisconsin Plaintiff got filed in a Mississippi case. I think</p> <p>22 it's just a mistake, but we're taking care of that issue.</p> <p>23 THE COURT: How?</p> <p>24 MR. CANSLER: We are discussing with the Plaintiff.</p> <p>25 I mean, well, this aside, we'll take care of it, your Honor.</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. SMITH: Nix, Douglas, Green and what was the</p> <p>2 other one you said?</p> <p>3 THE COURT: Jackson.</p> <p>4 MR. SMITH: Yes, your Honor. And Jackson plaintiff.</p> <p>5 THE COURT: Can you do that in two weeks?</p> <p>6 MR. SMITH: Yes, ma'am.</p> <p>7 THE COURT: Thank you, sir.</p> <p>8 (Pause)</p> <p>9 Mr. Mulholland, we were on the Motion to Dismiss, I</p> <p>10 think, right?</p> <p>11 MR. MULHOLLAND: Yes, your Honor.</p> <p>12 THE COURT: Go ahead.</p> <p>13 MR. MULHOLLAND: Now the additional problem with the</p> <p>14 McManus --</p> <p>15 THE COURT: I'll give him -- I'll give McManus seven</p> <p>16 days to file the appropriate Fact Sheets signed.</p> <p>17 MR. MULHOLLAND: One additional glaring problem with</p> <p>18 those Fact Sheets is this: We're aware that at least 12 of</p> <p>19 those 29 are retread, that also have asbestos claims and</p> <p>20 pursuant to the Court's various orders, six, 12, 14, 25, and 27,</p> <p>21 documents pertaining to those claims should be filed with the --</p> <p>22 THE COURT: You got them out of the Manvel Trust? Is</p> <p>23 that where you're getting those -- that information, the Manvel?</p> <p>24 MR. MULHOLLAND: Partially from the Manvel Trust and</p> <p>25 partially from the records of the Defendants who have also</p>

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1 -- some of whom also face asbestos findings.
 2 THE COURT: I'm sorry. And your name again, please,
 3 sir?
 4 MR. CANSLER: My name is Jason Cansler.
 5 THE COURT: I'm sorry?
 6 MR. CANSLER: Jason Cansler, C-a-n-s-l-e-r.
 7 THE COURT: Cansler, thank you, sir.
 8 Mr. Cansler, did you know that 12 of the 29 have
 9 been previously diagnosed with asbestosis?
 10 MR. CANSLER: I can't speak specifically about that,
 11 no, ma'am.
 12 THE COURT: Why?
 13 MR. CANSLER: Because I don't know if -- he's saying
 14 that they currently are not being diagnosed with a mixed dust
 15 pneumoconiosis. I don't know what he's trying --
 16 THE COURT: Well, these are your clients.
 17 MR. CANSLER: Well, I'm trying to figure out what
 18 he's suggesting to this Court.
 19 THE COURT: What he's telling me is that he has
 20 information either from internal Defendant exhibits, their own
 21 information in having defended silicosis -- asbestosis cases, or
 22 from the John Manvel Trust, that 12 of your 29 have had previous
 23 claims of asbestosis.
 24 MR. CANSLER: Okay.
 25 THE COURT: Is that what you're saying?

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1 MR. MULHOLLAND: That's correct, your Honor.
 2 THE COURT: Is that on your Fact Sheets that they
 3 have been previously diagnosed with asbestosis?
 4 MR. CANSLER: If that was, in fact, true, I would
 5 recommend to this Court that it should be on those Fact Sheets.
 6 We rely on their answers to those Fact Sheets, yes, ma'am.
 7 THE COURT: Have you represented anybody in
 8 asbestosis claims, your firm?
 9 MR. CANSLER: Yes, ma'am.
 10 THE COURT: Did you represent any of these 29 in
 11 your asbestosis claims?
 12 MR. CANSLER: I don't know the answer to that and
 13 would hate to be wrong.
 14 THE COURT: Okay. I'm going to give you 30 minutes
 15 to come back and give that information from someone in your
 16 office that knows.
 17 MR. CANSLER: Yes, ma'am.
 18 Is there anything else before I?
 19 MR. MULHOLLAND: No, your Honor.
 20 THE COURT: Thank you.
 21 MR. CANSLER: Thank you.
 22 THE COURT: But we won't talk about McManus any more
 23 until this gentleman returns.
 24 MR. MULHOLLAND: Now your Honor the other case that
 25 I think is still impacted or likely to be impacted by our order

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1 25 motion, the Motion to Dismiss, is the Alexander case and the
 2 real problem there comes in with this group of new medical
 3 records, diagnoses --
 4 THE COURT: Well, we'll get to that.
 5 MR. MULHOLLAND: Excuse me?
 6 THE COURT: We'll get to that in a minute.
 7 MR. MULHOLLAND: Okay.
 8 THE COURT: Mr. Laminack, are you ready with the --
 9 have you looked at the three petitions?
 10 MR. LAMINACK: We're still searching, your Honor.
 11 We'll be ready before the hearing is over.
 12 THE COURT: Do you want to just print them out for
 13 him, Ms. Scotch?
 14 CASE MANAGER: Yes, your Honor.
 15 THE COURT: And what Mr. Laminack in Alexander you
 16 just filed -- let's just take up the last of it. You just filed
 17 the expert designations several months after the due date.
 18 Did you know that?
 19 MR. LAMINACK: I know that the due date fell during
 20 a period in which you had stayed the proceedings.
 21 THE COURT: No. I didn't stay the proceedings
 22 during that time.
 23 MR. LAMINACK: My understanding is your Honor stayed
 24 -- issued a stay order in February and lifted it June 30th.
 25 THE COURT: I think it was for certain matters and

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1 not designation of experts.
 2 MR. LAMINACK: My understanding is --
 3 THE COURT: I didn't -- I stayed discovery during
 4 that time.
 5 MR. LAMINACK: Yes, your Honor. You stayed all
 6 discovery.
 7 THE COURT: But not designation of experts. That's
 8 something you would have known from the beginning, your experts.
 9 MR. LAMINACK: Correct, your Honor.
 10 THE COURT: So why --
 11 MR. LAMINACK: We didn't designate them because my
 12 understanding was that was part of the Master Discovery Order
 13 and it was stayed by the Movants.
 14 And so I wasn't about to do anything to violate your
 15 order.
 16 THE COURT: Okay. Well so when the stay was vacated
 17 -- I don't agree with you about that, but let's say that you're
 18 correct -- that your reading of that was correct. When the stay
 19 was vacated -- Mr. Mulholland, end of the June?
 20 MR. LAMINACK: June 30th.
 21 MR. MULHOLLAND: June 30th.
 22 THE COURT: June 30th.
 23 MR. LAMINACK: Within six weeks, we listed all of
 24 the experts we are going to use.
 25 And I presume one of the things to be discussed

14 (Pages 50 to 53)

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1 today is the new Scheduling Order for the Alexander case.
 2 THE COURT: I don't think so.
 3 MR. MULHOLLAND: Your Honor, one of the truly
 4 remarkable things about these new reports is they started -- the
 5 dates on them go back to January of 2005 and the first time the
 6 Defendants saw them was when they -- when the Alexander
 7 plaintiffs responded to our Motion for Summary Judgment on
 8 August 18th, 2005, and that motion had been filed in February.
 9 So there are enormous timing problems throughout this process.
 10 THE COURT: I had -- and by the way, I had expert
 11 discovery, which is why we had a February hearing of the
 12 experts, the Dauberts and everything else. We had all those
 13 were designated. The diagnosing physicians only were designated
 14 per my Fact Sheet requirement. That discovery was supposed to
 15 be ongoing. I never stayed those.
 16 The experts were due in Alexander June the 1st, '05.
 17 I never stayed Alexander's discovery. I never stayed Alexander
 18 at all. And instead, even if you -- there was some misreading
 19 of that, that order on the regular MDL cases was vacated end of
 20 June and these experts were not designated until August the
 21 12th.
 22 MR. LAMINACK: Correct, your Honor.
 23 THE COURT: So why were they late designated?
 24 MR. LAMINACK: They weren't late, your Honor.
 25 I mean, you lifted your stay June 30th. The stay

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1 order makes no distinction. It doesn't carve out Alexander at
 2 all. It simply states, "All the discovery proceedings." Within
 3 a very reasonable time after you lifted your stay, a lot of
 4 deadlines had run during your stay. And certainly within a
 5 reasonable time after you lifted your stay and in light of all
 6 of the rulings and pronouncements the Court had made, I think
 7 less than six weeks is a very reasonable time to attempt to
 8 comply and address the Court's concerns, concerning experts, all
 9 that you've said and written.
 10 It would be obviously derelict not to have done
 11 that, and not to take into consideration everything you said and
 12 all your rulings about experts, so we have been very careful in
 13 what we've done with respect to experts. And I think you'll
 14 find that we've been very thorough and in the Motion to Dismiss
 15 and the Motion for Summary Judgment that they addressed, I hope
 16 to have an opportunity to discuss that with you and why we did
 17 certain things. I certainly think less than six weeks time
 18 after you lifted the stay is reasonable time for designation.
 19 THE COURT: Why is that? I assume you had them all
 20 along?
 21 MR. LAMINACK: Not all of them. We certainly had
 22 some of them. Some of them we had been working with.
 23 MR. MULHOLLAND: Your Honor, all but four are dated
 24 before June 7, 2005 and they began receiving them January 11th,
 25 2005. And I can run down the dates on -- the dates and letters

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1 that need be, but the bulk of them were done by April 2005 and
 2 again, the Defendants didn't see them until August 18th.
 3 MR. LAMINACK: That's correct. Discovery was
 4 stayed.
 5 MR. MULHOLLAND: What was not stayed, however, your
 6 Honor, even if discovery were stayed, was our Motion for Summary
 7 Judgment and this is only thing that they submitted in response
 8 to our Motion for Summary Judgment. It's been on file since
 9 February -- February 25th.
 10 (Pause)
 11 THE COURT: Well, I'm not sure that that's a good
 12 explanation, Mr. Laminack.
 13 MR. LAMINACK: What's that, your Honor?
 14 (Pause)
 15 THE COURT: Did you print them off?
 16 THE CLERK: Yes. They are printing.
 17 THE COURT: Thank you.
 18 (Pause)
 19 I'm waiting for -- I think the whole matter will be
 20 resolved when he looks at the petitions. I'm going to dismiss
 21 it for lack of jurisdiction anyway.
 22 MR. LAMINACK: Dismiss the whole case for lack of
 23 jurisdiction?
 24 THE COURT: When you look at the petitions, I think
 25 you'll realize that. You've had over a year to identify -- to

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1 properly identify the Defendants with their citizenship.
 2 MR. LAMINACK: Well, first of all, your Honor --
 3 THE COURT: Their place of incorporation, and their
 4 principal place of business, and for some reason, the Plaintiffs
 5 have been unable to do that.
 6 MR. LAMINACK: First of all, I disagree with that,
 7 your Honor.
 8 Second, there's only one party moving.
 9 THE COURT: Pardon?
 10 MR. LAMINACK: There's only one party -- one
 11 Defendant that's moved for dismissal, based on lack of
 12 jurisdiction.
 13 THE COURT: I can sua sponte do this any time.
 14 MR. LAMINACK: I understand that, your Honor.
 15 THE COURT: At any time and you all have had more
 16 than enough time. I have given you so much leeway in this case
 17 for improper pleadings, to fix them. You fix them one time then
 18 they go back to the improper pleading a second time. And all
 19 you were supposed to do was clarify about the one Defendant and
 20 instead you muddled the water with all the Defendants again.
 21 Any other Motions to Dismiss?
 22 MR. MULHOLLAND: Your Honor, we have additional
 23 arguments about the Alexander documents, but we'll defer those
 24 based on the Court's comments.
 25 THE COURT: Go ahead. If you'd like to talk about

15 (Pages 54 to 57)

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1 them, you may.

2 MR. MULHOLLAND: Well, the -- it's more of the same.

3 Of the -- and this gets nightmarish because there are
4 plaintiffs in the first petition that don't appear in the Second
5 Petition. They reappear in the Third Petition.

6 THE COURT: I know. It's a mess.

7 MR. MULHOLLAND: But suppose there are about 82 that
8 purport to have new diagnoses and I think that's right -- 60
9 percent of those are retreads. They've also got asbestosis
10 claims.

11 Now in reference to our motion that we're talking
12 about the, the Order 25 Motion, those documents have not been
13 produced, and obviously it's critical to this claim for
14 silicosis that we have their prior asbestosis claims. 33 --

15 THE COURT: Mr. Laminack, do you have those by the
16 way?

17 MR. LAMINACK: Pardon me, your Honor?

18 THE COURT: In the Alexander and Mr. Mulholland is
19 saying that -- how many -- what percentage of those?

20 MR. MULHOLLAND: Sixty of 82, 73 percent.

21 THE COURT: Sixty of 82 have also previously had
22 asbestosis claims; is that correct?

23 MR. LAMINACK: I have no idea, your Honor. I'm not
24 aware of this. What I can say is, we never, never represented
25 an asbestos claimant and then turned around and retread it as a

1 August. Okay. Just -- you want to put it on the overhead
2 screen?

3 MR. LAMINACK: So in short, we've given them
4 everything we have.

5 MR. MULHOLLAND: Your Honor, as a suggestion and
6 I'll do obviously whatever you like, we'd be willing this
7 afternoon or tomorrow to provide him a list of the Plaintiffs
8 that have asbestos claims. The lawyers that represent them --
9 the cases they were and so forth.

10 THE COURT: Just put them on the overhead. Let me
11 see them on the Elmo.

12 What information do you have?

13 Mr. Mulholland, has the Plaintiff's Attorney in
14 Alexander given you the information from the asbestosis claims?

15 MR. MULHOLLAND: No. We have three different --

16 THE COURT: Any of them?

17 MR. MULHOLLAND: I don't -- they identified the --
18 the Court may recall what we call the "O'Quinn 331" just as
19 Plaintiffs who also had asbestos claims, but we don't have any
20 of the underlying --

21 THE COURT: The X-rays, the diagnoses?

22 MR. MULHOLLAND: Correct. We don't have that -- we
23 do not have that, your Honor.

24 MR. BARGER: What are you trying to do?

25 MR. MULHOLLAND: Focus.

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1 silicosis claimant. We never, ever did that.

2 THE COURT: But Mr. Mulholland is saying that
3 somebody else did.

4 MR. LAMINACK: Now we have gone to --

5 THE COURT: But that the 70-something percent of
6 these remaining Plaintiffs also have a claim for asbestosis.

7 MR. LAMINACK: Okay. We have gone to great lengths
8 to inquire of our clients whether or not they ever had an
9 asbestos claim.

10 THE COURT: Do you have the names?

11 MR. MULHOLLAND: Yes, your Honor. I have a
12 spreadsheet that lists them all out.

13 THE COURT: Let's do that. Let's just read them in.

14 MR. MULHOLLAND: And --

15 THE COURT: This is what we did at the February
16 hearing.

17 MR. LAMINACK: I understand that and when we got the
18 names at the February hearings, we wrote those clients letters.

19 We said, "Who is your lawyer? Did you have an asbestos lawyer?"

20 When we got that information, we wrote the lawyers. We said,

21 "Please provide that information. We're under Court Order to
22 turn it over."

23 In some cases we got it. In some cases we didn't
24 get it from the lawyers.

25 THE COURT: And here we are -- here we are in

1 MR. MULHOLLAND: Do that down here.

2 THE COURT: Zoom in and push focus. Zoom in all the
3 way. We'll do it. Ms. Scotch will do it. This is very
4 difficult.

5 (Laughter)

6 MR. KRUTZ: Sit down, Barger.

7 MR. BARGER: I failed again.

8 (Pause)

9 MR. MULHOLLAND: Your Honor, on the left column is
10 the name, and Column A and B is the last and first name of the
11 Plaintiff. Column C is the social security number. Over to the
12 right, beginning at Column K, L, M, and N are information based
13 on either our firm's internal records or the JM Trust, which we
14 were able to determine, the case the Plaintiffs were in, their
15 lawyers historically. You know, this is the information that we
16 have about the asbestos claims.

17 THE COURT: Mr. Laminack, these are your clients.

18 This information you had in February and here we are in August.

19 MR. LAMINACK: Correct. It's information I provided
20 them --

21 THE COURT: And do you have the X-rays from the
22 asbestosis claims? Do you have the medical reports from the
23 asbestosis claims?

24 These are your clients. They were supposed to have
25 identified on their original Fact Sheet, all of these diagnoses,

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 but apparently failed to do so.</p> <p>2 Now what you have here is 70-some-odd percent of</p> <p>3 your clients that have had both a diagnosis, according to you,</p> <p>4 of silicosis and asbestosis, which when I heard all the experts</p> <p>5 in February, not a single expert had ever seen a combination of</p> <p>6 those two. Only Plaintiff's lawyers have seen them.</p> <p>7 Not a single physician that testified here had ever</p> <p>8 seen -- they didn't rule out that it wasn't possible, but none</p> <p>9 of them had ever seen a case of asbestosis and silicosis</p> <p>10 combined.</p> <p>11 And so the sanctions that were given originally for</p> <p>12 this may continue. Those documents should be provided by you</p> <p>13 clients. I assume that your experts that you've identified are</p> <p>14 going to explain why some 70 percent of your clients have both</p> <p>15 silicosis and asbestosis and how that could possibly have</p> <p>16 occurred, and I just need to give you fair warning about this</p> <p>17 because this stretches credibility.</p> <p>18 MR. LAMINACK: Your Honor, I understand and I don't</p> <p>19 like it, either. I want the Court to know that. I have</p> <p>20 listened very carefully to everything you've said.</p> <p>21 THE COURT: I appreciate that.</p> <p>22 MR. LAMINACK: And I've heard your concerns. And</p> <p>23 THE COURT: But those were February concerns and --</p> <p>24 MR. LAMINACK: I totally understand. And you bet my</p> <p>25 experts are going to explain that. I think the explanation on a</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. LAMINACK: -- other than to say we have been</p> <p>2 very candid with our clients about these issues and the</p> <p>3 repercussions.</p> <p>4 And your Honor, I've got enough to do. I don't want</p> <p>5 to represent people that don't have legitimate cases. I don't</p> <p>6 want to do that. That's not my purpose in being here. All I</p> <p>7 know is at this point 87 of these Alexander plaintiffs have</p> <p>8 good, solid Daubert-proof diagnoses of silicosis. They've got</p> <p>9 it.</p> <p>10 THE COURT: And 70-some-odd percent of those also</p> <p>11 had apparently solid Daubert-proof asbestosis diagnoses.</p> <p>12 Did you print off the document for him?</p> <p>13 MR. LAMINACK: I doubt that.</p> <p>14 THE COURT: Pardon?</p> <p>15 MR. LAMINACK: I doubt that's true.</p> <p>16 THE COURT: About the asbestosis?</p> <p>17 MR. LAMINACK: Yes.</p> <p>18 THE COURT: And Mr. Laminack, you can speak on</p> <p>19 behalf of your clients about that?</p> <p>20 MR. LAMINACK: As I say, your Honor, I doubt that. I</p> <p>21 doubt the numbers, and I doubt the diagnosis.</p> <p>22 THE COURT: You doubt that they had claims or you</p> <p>23 doubt that they actually had asbestosis?</p> <p>24 MR. LAMINACK: Both.</p> <p>25 THE COURT: Okay. Here are your -- we've printed</p>
<p style="text-align: right;">Page 63</p> <p>1 lot of the cases is the asbestosis diagnosis is wrong.</p> <p>2 THE COURT: Well, that would be a shame, wouldn't</p> <p>3 it, that your clients made fraudulent claims in asbestosis and</p> <p>4 now those same people who made fraudulent claims are trying to</p> <p>5 make another pneumoconiosis claim here. It -- that impacts</p> <p>6 their credibility tremendously.</p> <p>7 I wonder, also, for each of the Plaintiff's lawyers</p> <p>8 that have these cases, if they have informed their clients once</p> <p>9 you acquired this diagnosis for your clients that they now have</p> <p>10 to forever have the diagnosis of a terminal disease, that</p> <p>11 they're obligated to tell their life insurance carriers. If</p> <p>12 they acquire new life insurance, if they change health insurance</p> <p>13 providers, that they have this disease.</p> <p>14 Do you think that they know this, Mr. Laminack?</p> <p>15 MR. LAMINACK: Your Honor, that's a very good point.</p> <p>16 I agree totally with what you're saying.</p> <p>17 THE COURT: Would you mind standing in front of a</p> <p>18 microphone? I beg your pardon, Mr. Laminack. There's one on</p> <p>19 each of the tables -- actually most of the tables, and there's</p> <p>20 some overhead mikes that don't work because I had to disconnect</p> <p>21 them to do these, but...</p> <p>22 MR. LAMINACK: I understand and I agree with what</p> <p>23 the Court has said. Obviously I don't want to go into what I</p> <p>24 talked to my clients about --</p> <p>25 THE COURT: I understand.</p>	<p style="text-align: right;">Page 65</p> <p>1 off the three petitions that we're talking about, Mr. Laminack.</p> <p>2 And one more. There's one more coming, sorry. You can take</p> <p>3 that, too.</p> <p>4 MR. LAMINACK: And I'm not -- I'm not taking a</p> <p>5 cavalier attitude, your Honor, but that's not a problem.</p> <p>6 THE COURT: Well, I don't hear that.</p> <p>7 MR. LAMINACK: I know that's a problem.</p> <p>8 THE COURT: And I appreciate that, Mr. Laminack, but</p> <p>9 I --</p> <p>10 MR. LAMINACK: And you can bet I don't want to be</p> <p>11 here.</p> <p>12 THE COURT: This is your Court, Mr. Laminack.</p> <p>13 MR. LAMINACK: In this type of setting.</p> <p>14 THE COURT: You're welcome here any time and your</p> <p>15 clients.</p> <p>16 MR. LAMINACK: Well, I hope this is my courtroom,</p> <p>17 too, just like it is for the Defendants.</p> <p>18 THE COURT: It is your courtroom, Mr. Laminack.</p> <p>19 MR. LAMINACK: And I hope it belongs to my clients,</p> <p>20 too.</p> <p>21 THE COURT: It's not my courtroom. It belongs to</p> <p>22 all of you.</p> <p>23 Here's the third petition. And if you read them in</p> <p>24 order, you'll see the problems.</p> <p>25 MR. LAMINACK: I will do that right now, your Honor</p>

<p style="text-align: right;">Page 66</p> <p>1 THE COURT: Thank you, sir. 2 So I will excuse you and we'll go back then to 3 McManus. I see the attorney is back -- is in. 4 If you could change gears, Mr. Mulholland? 5 MR. CANSLER: They're working on it right now, your 6 Honor. They're supposed to call me back in ten minutes. I just 7 didn't want to miss what was going on in here. 8 THE COURT: All right. I assume you don't have a 9 cell phone on. 10 MR. CANSLER: Not in this big room, no, ma'am. 11 THE COURT: Thank you very much. 12 MR. MULHOLLAND: Your Honor, both with respect to 13 the McManus case and with respect to the information that's on 14 this chart as to Alexander, these matches to prior asbestos 15 claims were made by social security number and not name, so I'm 16 fairly confident, but not positive that it is. 17 THE COURT: Let's not talk about Alexander while Mr. 18 O'Quinn -- I mean, Mr. Laminack is not here. 19 (Pause) 20 Does that conclude then your presentation under 21 Roman Numeral II Discovery Motions to Dismiss? 22 MR. MULHOLLAND: Except for some additional 23 information about Alexander. 24 THE COURT: Okay. We'll then I'll come back to 25 that.</p>	<p style="text-align: right;">Page 68</p> <p>1 to hear about that. 2 But your Honor those four firms are Brent Coon and 3 Associates -- 4 THE COURT: Are who? 5 MR. ARGENTO: Brent Coon and Associates, your Honor. 6 Ingraham and Associates, Mr. Hooper's firm, and the Shannon Law 7 Firm, which I think may have been corrected or rendered moot 8 today because I think they only have the Cole case and that case 9 was dismissed, if I'm not -- 10 THE COURT: Okay. So that's -- we're talking three 11 law firms? 12 MR. ARGENTO: Yes, your Honor. And then there are 13 other -- there are other law firms, your Honor, that we were 14 able to determine that they are in partial compliance, but 15 there's great amounts of information that are missing that 16 caused them to not be in compliance with Order Number 25. 17 And I can get into the details by law firm, if you'd 18 like me to, but perhaps as a suggestion, we could talk about the 19 three law firms first that as far as our research has indicated 20 have not filed anything in compliance with Order Number 25. 21 THE COURT: Is the Brent Law Firm here? Brent Coon 22 and Associates? 23 MR. CANSLER: That's me again, your Honor. That's 24 my firm. 25 THE COURT: And can you tell me, do you have any</p>
<p style="text-align: right;">Page 67</p> <p>1 Now B, Motion to Compel Screening Companies' 2 Compliance with Order Number 25. 3 MR. ARGENTO: Good morning, your Honor. 4 My name is John Argento and I filed this motion on 5 behalf of my clients and certain other Defendants. Your Honor 6 issued Order Number 25, which I'm sure you're familiar with, 7 that required the disclosure and filing with the depository of 8 certain information dealing with names of the screening 9 companies that screened each of the Plaintiffs, medical records 10 that dealt with any Plaintiffs that were in this MDL, other 11 medical records and information from either other treating 12 physicians or diagnosing doctors. 13 Your Honor, what we did before we presented this and 14 prepared this motion, we went to the depository and got an index 15 of everything that was filed by either a party or on behalf of a 16 Plaintiff by a law firm that represented them in this 17 litigation. What we were able to determine, your Honor, is that 18 there are four firms that filed absolutely nothing in response 19 to Order Number 25 that we can determine. 20 Now there is one possibility, your Honor, and it 21 does get confusing sometimes. Some of the firms work together 22 on cases or they're affiliated with respect to certain clients, 23 so if one firm filed something that satisfied the requirement 24 for another law firm, I'm not here and able to determine that. I 25 need to hear from the Plaintiffs' firms about that and you need</p>	<p style="text-align: right;">Page 69</p> <p>1 documents in response to Order Number 25? 2 The problem with that is that I know that I said all 3 orders apply to all new cases, but I had a date of February 4 25th, 2005 that everybody had to file. I don't think their law 5 firm was even -- had a case here. 6 MR. ARGENTO: That's possible, your Honor. That's 7 possible in light of -- 8 THE COURT: So these, I think, that all they've got 9 are some new cases? 10 MR. CANSLER: We're one of the new cases, your 11 Honor, and I've got a letter here when we were filing and trying 12 to file with the Court. We were having difficulty because we 13 could not get a style. I talked to Ms. Scotch here, your Honor, 14 and of course, your clerk. 15 Where we were having difficulty actually filing it 16 and did not want to be out of compliance with any of the orders. 17 THE COURT: Okay. Well, you don't make any 18 agreements with my case manager. You're agreements either are 19 in court or made with other parties when you can file them, but 20 sending a letter to Ms. Scotch saying this is to confirm my 21 understanding of your conversations with my paralegal, doesn't 22 do a thing. 23 MR. CANSLER: Yes, ma'am. Well, I -- yes, ma'am. 24 THE COURT: And she's not obligated to respond at 25 your bottom line that says, "If this is not correct, please</p>

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1 notify either myself or my staff." That isn't how we do
 2 business here. It's not sent out to all the other parties.
 3 MR. CANSLER: I had spoke to --
 4 THE COURT: Would you give that back to him, please?
 5 What did you tell him about that?
 6 MR. CANSLER: -- a member of Forman Perry Watkins
 7 Reese and Tardy about this and told them that we were having
 8 some problems and that was the extensive instructions.
 9 THE COURT: What problems were you having?
 10 MR. CANSLER: I couldn't -- they would not give me a
 11 cause number to file the discovery into the repository, as I
 12 understood it. I could have filed it, but they didn't -- it
 13 didn't -- I didn't have a number.
 14 THE COURT: Who was supposed to give you that? What
 15 was your understanding about that?
 16 MR. CANSLER: My understand was, and if I could read
 17 my letter, I think it --
 18 THE COURT: No. I don't care what your letter to my
 19 case manager.
 20 What was your understanding about how you were
 21 supposed to file? Did you call the Liaison Plaintiff's Counsel?
 22 MR. CANSLER: Mr. Watts? Yes, ma'am.
 23 THE COURT: And what did he tell you?
 24 MR. CANSLER: I don't recall him ever getting back
 25 in touch with me, to be honest with you.

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1 MR. ARGENTO: Your Honor, to follow up on your point 1
 2 about when this firm may have been involved --
 3 THE COURT: Your cause number -- what case are you
 4 talking to -- talking about for cause number, McManus?
 5 MR. CANSLER: Yes, ma'am.
 6 MR. ARGENTO: Your Honor, there were Fact Sheets
 7 filed in that case as far back as May 5th.
 8 THE COURT: I have a Southern District Cause Number
 9 205-121 and you filed documents in that cause number.
 10 MR. CANSLER: And my understanding was we were
 11 supposed to stop.
 12 Your Honor, let me call Ms. Coleman once again and
 13 find out for --
 14 THE COURT: What are you doing here if you don't
 15 know anything about this? This is very unfortunate.
 16 MR. CANSLER: I was just trying to help out a lawyer
 17 colleague of mine --
 18 THE COURT: I understand that, but --
 19 MR. CANSLER: -- who cannot fly because of her --
 20 THE COURT: -- you need to -- do you have a Federal
 21 license?
 22 MR. CANSLER: Yes, ma'am.
 23 THE COURT: Have you read the Federal Rules on what
 24 you're supposed to do to appear for lead counsel and what your
 25 level of -- do you have the authority to bind your client today?

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1 MR. CANSLER: Yes, ma'am.
 2 THE COURT: To what?
 3 MR. CANSLER: It just depends on what you -- I need
 4 to. I would have full authority, I would say.
 5 THE COURT: You're supposed to be familiar with the
 6 case and you're, as you said, clearly not so why don't you go
 7 back and check with your firm and see what it is you can do?
 8 MR. CANSLER: And what information specifically does
 9 the Court request or is asking me --
 10 THE COURT: I wanted to know why you've not filed
 11 the documents in response to Order Number 25. It can't be
 12 because you didn't have a cause number, because you've been
 13 filing documents in this cause number in McManus, 2-05-121,
 14 since the case was transferred.
 15 MR. CANSLER: In my last conversation with Ms.
 16 Coleman, her representations to me, your Honor, was that
 17 everything that we had in our possession, custody, and control
 18 had been turned over to the Court. If there's things out
 19 there --
 20 THE COURT: I don't take discovery. It goes into a
 21 document depository.
 22 MR. CANSLER: And that's what I --
 23 THE COURT: Can you find out what documents you have
 24 filed in response to Order Number 25?
 25 MR. CANSLER: Yes, ma'am.

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1 THE COURT: Do you have X-rays of your clients?
 2 MR. CANSLER: Those have been filed, it's my
 3 understanding.
 4 MR. ARGENTO: Your Honor, that's not what the
 5 deposit log from the depository says. The depository log
 6 indicates that on May 5th, they filed some Fact Sheets and
 7 that's the only filing they have for his law firm. And I got
 8 this from --
 9 THE COURT: Find out where the X-rays are, where the
 10 expert reports are, where the diagnosing physician reports are.
 11 MR. CANSLER: Yes, ma'am.
 12 THE COURT: Did any of these have asbestosis claims?
 13 MR. ARGENTO: Your Honor, these are part of the
 14 McManus, so yes. We've already had that discussion this
 15 morning.
 16 THE COURT: Oh, McManus, they've had asbestosis
 17 claims also?
 18 MR. ARGENTO: I believe so, your Honor.
 19 THE COURT: You need to find out where those
 20 documents are that have to do with the asbestosis claims, and
 21 report back.
 22 MR. CANSLER: Yes, ma'am. Sorry for the
 23 inconvenience.
 24 THE COURT: Thank you, sir.
 25 MR. ARGENTO: Your Honor, the next firm is the

<p style="text-align: right;">Page 74</p> <p>1 Ingraham firm and according to the deposit log from the 2 depository -- 3 THE COURT: Is anyone here from Ingraham? 4 MR. ARGENTO: Cheri is not sure if they have any 5 active cases. 6 THE COURT: Cases left? 7 MR. ARGENTO: And your Honor, when we sent out the 8 motion, we sent it out a week or ten days in the advance with 9 the hope that some of these firms would call us. No one called 10 us from the Ingraham firm. 11 THE COURT: Okay. 12 MR. ARGENTO: So if they do not have any active 13 cases, we'll withdraw them. 14 THE COURT: And what have you got, Mr. Hooper? 15 MR. HOOPER: Your Honor, my reading of Order 25 was 16 about the screening companies only. As I've advised the Court 17 several times and the defendants, we didn't use screening 18 companies. We had a discussion with the Court during the 19 February hearing about on the day the order was entered that we 20 had used a company when we couldn't use land-based X-rays -- 21 like a facility that had land-based X-rays that we used a 22 company called "Inner Visions," to do the X-rays. And during 23 the discussion with the Court, it's my understanding that we had 24 to produce those records. We have produced Inner Visions 25 records to the Defendant.</p>	<p style="text-align: right;">Page 76</p> <p>1 produce a handful, and I don't know the number of files of 2 people that were incomplete that he had not diagnosed. So if 3 we're talking about those doctors, which I didn't read it, and I 4 asked the Court about the scope of it. 5 THE COURT: Wait a minute. What are you missing 6 that you want from Mr. Hooper's clients? 7 MR. ARGENTO: Well, your Honor, we're just asking 8 for what you ordered and that any physician that made a 9 diagnosis should supply through Plaintiff's Counsel an affidavit 10 saying they've supplied everything and we don't have affidavits 11 from anyone who diagnosed any of Mr. Hooper's clients. 12 MR. HOOPER: If that's the scope of the order, I'm 13 sorry because I -- I'm sorry. We'll get that affidavit. 14 THE COURT: All right. How long do you need to do 15 that? 16 MR. HOOPER: May I have two weeks? 17 THE COURT: That's fine. Thank you. 18 MR. ARGENTO: Your Honor, that takes care of that 19 group of firms and then there are other firms, your Honor, the 20 first one being Campbell Cherry where our investigation has 21 disclosed that they have provided no list of screening companies 22 or other medical testing companies as was required, and while 23 they did file an affidavit from M&N, they have not filed 24 affidavits from Drs. Martindale, Hilbun, Cooper, Ray Herron, and 25 perhaps other doctors.</p>
<p style="text-align: right;">Page 75</p> <p>1 My reading of 25 was about the screening companies 2 and we didn't use screening companies. If the Court would like 3 for me to file an Affidavit that Inner Visions has complied with 4 producing all of their records, I'll be happy to do that or if 5 the Court needs something from Inner Visions, we'd be happy to 6 do that. 7 THE COURT: Okay. That's not what I ordered in 8 Order 25, that you should file on the date that I specified, "A 9 list of all screening companies, medical testing companies, and 10 other entities or persons who supplied any Plaintiff's B-Read 11 and/or diagnosis of silica-related diseases to any Plaintiff's 12 Counsel in this MDL." 13 And of course, the list should include the name, 14 addresses, and phone number of each screening company, but did 15 not apply just to screening companies. 16 Now these are third-party people. If you don't -- 17 if you tell me you didn't check with them, but if you don't 18 have any control over the, that's another thing all together. 19 But if these are going to be produced in any way to substantiate 20 any of these claims are -- 21 MR. HOOPER: Your Honor, to the extent that it -- if 22 we're talking about doctors like Dr. Ballard, who did the B- 23 Reads, or Dr. Levy, who did the medical report. If it 24 encompasses those, Dr. Ballard and Dr. Levy have produced all 25 their records, also. My understanding is Dr. Levy didn't</p>	<p style="text-align: right;">Page 77</p> <p>1 THE COURT: I think their testimony would suffice. 2 MR. ARGENTO: Good. But we would like -- 3 THE COURT: That was all under oath. 4 MR. ARGENTO: Your Honor, we weren't sure exactly 5 how much detail they got into, whether they were asked about all 6 their records and whether or not they still retained anything, 7 so that's the only reason we brought it up. 8 THE COURT: I think that all those people did say 9 they didn't have any records. They didn't have any records at 10 all. 11 MR. BARGER: Yes. 12 THE COURT: If I recall correctly. 13 MR. BARGER: That's a correct assessment. 14 MR. ARGENTO: Your Honor, we'd still like a list of 15 all the screening companies and other medical providers, because 16 again there's no way for us to know if we're missing anybody 17 unless we have that list and it's provided. 18 THE COURT: All right. Campbell Cherry? 19 MS. SNAPKA: Your Honor, I believe those cases were 20 remanded. I don't believe we have any more. 21 THE COURT: I don't think I have any more Campbell 22 Cherry cases in front of me. 23 MS. SNAPKA: Yes. I believe that's correct, your 24 Honor. 25 MR. ARGENTO: Your Honor, the other firm would be</p>

<p style="text-align: right;">Page 78</p> <p>1 the Alwyn Luckey (phonetic) firm. Again, no list of screening 2 companies. 3 THE COURT: The what company? 4 MR. ARGENTO: Alwyn Luckey, that law firm. 5 THE COURT: Anyone here from that company -- from 6 that firm? 7 MR. MULLINS: I'm here for the law settlement. Our 8 people were here live and while were here they produced 9 everything we had. I don't know what they suggest we -- 10 THE COURT: Why not just make a -- if you make a 11 representation that that's all there is, there isn't any more. 12 MR. MULLINS: That's all there is, and I think these 13 were referenced again were May cases, which this Court -- we've 14 given everything we have. 15 THE COURT: Okay. 16 MR. ARGENTO: Your Honor, there was a letter from 17 Mr. Mullins indicating that he had attempted to contact Quality 18 Testing Services, that they were out of business, that some of 19 their records had been destroyed in a hurricane and that the 20 owner, Mr. Childers, had been away on vacation for a week and 21 that he was going to continue to try to speak with him and get 22 compliance with the Court's order. That was a letter dated in 23 February. 24 THE COURT: I don't have any of his cases. 25 Do I have any of his cases? Is he part of the 17?</p>	<p style="text-align: right;">Page 80</p> <p>1 have been remanded, as well. 2 THE COURT: Do you have any response to that anyway? 3 MS. SNAPKA: I do not. I am not familiar with it. I 4 only know that those -- all the cases that -- 5 THE COURT: Is anybody from the law firm here? 6 MS. SNAPKA: No, your Honor. I know that Mr. 7 Foxworth had a family emergency and I was advised of that, I 8 think, yesterday. 9 MR. MULLINS: His mother has brain cancer. It's 10 serious. 11 THE COURT: Thank you. 12 MR. ARGENTO: Thank you, your Honor. 13 MR. HOOPER: Your Honor, also on the fact that the 14 20 days haven't expired. I understand that they had problems 15 filing because the 20 days. The motion was filed on the 12th. 16 THE COURT: I don't have those cases before me 17 anyway. I just thought if anybody was here, they can respond; 18 otherwise, we'll move on. 19 Let's talk about the Motion to Preserve Plaintiff's 20 Original Experts. I did not grant that motion. I wanted to 21 hear that on the agenda. I have great concern because these may 22 be evidence now in not only these cases, but in criminal 23 investigations. I'm very careful now about what we're going to 24 do with those X-rays. I don't intend to give them to just one 25 party.</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. MULLINS: No, your Honor. 2 MR. ARGENTO: I think they're remanded. 3 THE COURT: Do you answer anyway? Do you know 4 anything about that company? 5 MR. MULLINS: It's my understanding those records 6 were destroyed in Hurricane Ida. I think he was actually might 7 have had one or two of the actual cases that we represented. We 8 had never been successful in getting those back. He's an 9 independent party. He's out of business. He does something 10 else now. I've talked to his wife multiple times and we've 11 tried to get them to us. She said she thought they were all 12 destroyed. They've never been given to us. 13 MR. ARGENTO: Your Honor, the last one is the Porter 14 and Maluth (phonetic) Firm and the Foxworth and Casano 15 (phonetic), who I believe filed cases jointly. There were 19 16 providers that we were able to determine from review of the 17 records that we did not have affidavits from, none of whom were 18 experts that testified here at your Daubert hearing. 19 And your Honor, interestingly enough, ten out of the 20 19 called us in response to the motion and all ten of them told 21 us that they had never heard of Order Number 25. They had never 22 been contacted by anybody from the law firm to comply and that 23 in every instance we referred them to Attorney Porter and said, 24 "You need to talk with him." 25 MS. SNAPKA: Your Honor, I believe all those cases</p>	<p style="text-align: right;">Page 81</p> <p>1 So what are we going to do about them? 2 MR. ATWOOD: May I suggest -- Roy Atwood, your 3 Honor. 4 My suggestion is that we keep them right where they 5 are. 6 THE COURT: Well, who is going to pay for that? 7 They're in a depository? 8 MR. ATWOOD: They're in Mikal Watts' warehouse. 9 THE COURT: Well, then somebody needs to pay for 10 them to stay there. 11 Who's going to do that? 12 MR. ATWOOD: What's the current arrangement? 13 MS. GREEN: My understanding is nobody has ever paid 14 Mr. Watts anything. 15 THE COURT: But that doesn't seem quite right. 16 MR. BARGER: We'll get it worked out with Mr. Watts. 17 MR. ATWOOD: I mean, if that's the only issue, we 18 can resolve that and I'm confident we can resolve a protocol for 19 use of the X-rays as they become necessary to the cases in 20 Mississippi once they're remanded. I think the important thing 21 is that they stay in one place. 22 My concern, quite frankly, your Honor, is once the 23 case is remanded, the order takes affect, that someone may just 24 decide, "Well, I want to take mine back to my office." And you 25 know, "I'll ask forgiveness, not permission." And I just want</p>

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1 an order in place that keeps them all there and then we can work
2 out the details of making sure they're available to be used when
3 they need to be used and paid for.

4 THE COURT: Mr. Hooper, this was your motion?

5 MR. HOOPER: Yeah, it's actually their Motion to
6 Preserve. It was our Motion to Withdraw.

7 First, we believe that a Court of competent
8 jurisdiction, when the cases go back to Mississippi should
9 control the X-rays and control the --

10 THE COURT: That may very well be, but it's not back
11 in Mississippi and in the meantime, I told Liaison Counsel I
12 have had a call from -- I can't remember how long ago, Mr.
13 Barger --

14 MR. BARGER: About a month ago, Judge.

15 THE COURT: Pardon?

16 MR. BARGER: About a month ago.

17 THE COURT: I had a call from the U.S. Attorney
18 locally about access to discovery in the depository. First, I
19 explained that he didn't understand it was an ex parte -- he
20 doesn't do civil stuff, so he didn't understand it was an ex
21 parte conversation that I had to disclose to the other parties
22 and so I got Liaison Counsel on the phone and told him that I
23 had received this call. So once I am told that someone is
24 looking at this information or who wants access to this
25 information from the U.S. Attorney's Office, who have been

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1 those. The Court to this date has not ordered us to produce
2 those.

3 So those X-rays that are the basis of the diagnosis
4 -- or the basis of the B-Read, I'm sorry, have never been
5 ordered by the Court and the Court doesn't have jurisdiction to
6 order anything further on those documents.

7 Again, since the -- in my opinion the Court's
8 jurisdiction lapsed on July 30th. The Court no longer has
9 jurisdiction over those X-rays.

10 THE COURT: Well, why don't I just turn them over to
11 the U.S. Attorney then?

12 MR. HOOPER: Your Honor, I don't think that you have
13 jurisdiction to do that. You don't have jurisdiction to do
14 anything with respect to X-rays that Plaintiffs voluntarily
15 produced now that you have conceded that you don't have
16 jurisdiction.

17 THE COURT: Thank you.

18 MR. HOOPER: Let me --

19 THE COURT: Go ahead.

20 MR. HOOPER: Judge, just so it's clear and I don't
21 want to be standing in front of you so that there's any
22 misunderstanding. I acted accordingly with what I just said and
23 proceeded based upon what I just said in relation to my X-rays.

24 THE COURT: You took them out of the depository?

25 MR. HOOPER: Yes, I did, your Honor.

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1 called, I assume, by the Manhattan, Southern District of New
2 York Office. I just have to look. I have to be very careful
3 then about what happens to these documents in the depository, so
4 --

5 MR. BARGER: And for the record --

6 THE COURT: -- and so that was my concern, Mr. and
7 I'm not -- I don't think they'll destroy them in any way. They
8 need to be in one central place, but I don't intend to just let
9 them go back from in there.

10 MR. HOOPER: Your Honor, I believe -- strongly
11 believe that since the Court doesn't have jurisdiction, that the
12 Court should release its jurisdiction over documents and over
13 the cases. I also, as I stated in the brief, that I believe
14 when the Court entered its remand order, Order Number 29, it
15 stayed it for 30 days that on the 30th day that the cases were
16 remanded.

17 THE COURT: Well, you must have thought I had some
18 jurisdiction or you wouldn't have filed a motion to give you
19 back the X-rays, or you would have just walked in and taken
20 them.

21 MR. HOOPER: I filed that motion during the 30-day
22 stay. Also, I don't -- the argument that we have is that the X-
23 rays are the Plaintiff's diagnosing X-rays. The Plaintiffs
24 voluntarily put their X-rays without court order into the
25 document depository. The Court never ordered us to produce

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1 THE COURT: Then Mr. Hooper, you will get those back
2 into the depository by 5:00 o'clock today or you will be in
3 contempt of court and you will be held in this courtroom until
4 they are replaced.

5 MR. HOOPER: Your Honor, I cannot physically --

6 THE COURT: I denied that motion. You knew I denied
7 the motion and you call your office and you get them here today.
8 You will physically do that today.

9 MR. HOOPER: Your Honor, I cannot physically --

10 THE COURT: If you have to hire a jet to get them
11 here, you will get them here.

12 MR. HOOPER: Your Honor, I ask that you stay that
13 order so that --

14 THE COURT: I will not. You will get them here
15 today.

16 MR. HOOPER: -- so that I may have a Court of
17 competent jurisdiction review that.

18 THE COURT: Get them here today, now.

19 MR. HOOPER: Which X-rays, your Honor?

20 THE COURT: The X-rays you removed from the
21 depository. When did you do that?

22 MR. HOOPER: I removed them once the Court's
23 jurisdiction lapsed.

24 THE COURT: When did you do that?

25 MR. HOOPER: The first week of August, Monday,

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 whatever the first Monday was.</p> <p>2 THE COURT: You call your office and get those X-</p> <p>3 rays. Where are they, exactly?</p> <p>4 MR. HOOPER: Some of the X-rays are in my office,</p> <p>5 some of the X-rays are at a doctor's office being reviewed.</p> <p>6 THE COURT: You call -- you're excuse right now for</p> <p>7 30 minutes to get -- to tell me when you can get those X-rays</p> <p>8 here right now.</p> <p>9 MR. BARGER: Judge, I would just add for the record</p> <p>10 that my office has received an inquiry from the U.S. Attorney's</p> <p>11 office --</p> <p>12 THE COURT: Where is Mr. Watts? Did he allow those</p> <p>13 X-rays to leave his depository?</p> <p>14 MR. GOWEN: Your Honor, Gregory Gowen for Mr. Watts,</p> <p>15 plaintiff. Some will come on either side to do the X-rays and</p> <p>16 we video it and if they have to check it out for a doctor to</p> <p>17 look at, then they have sign off on a piece of paper for it, for</p> <p>18 X-rays to be taken out.</p> <p>19 THE COURT: You knew there was a motion before me on</p> <p>20 this?</p> <p>21 MR. GOWEN: Your Honor, the motion that I'm aware of</p> <p>22 that was denied, I'm not sure of the timing of it as far as --</p> <p>23 THE COURT: And the denial was entered when?</p> <p>24 MR. HOOPER: The denial was entered before we</p> <p>25 removed them, Judge.</p>	<p style="text-align: right;">Page 88</p> <p>1 THE COURT: It may be a good time to do that.</p> <p>2 MR. GOWEN: Your Honor, I think that each of the</p> <p>3 groups have provided a list of their X-rays that are in the</p> <p>4 repository and every time that a Defendant has come to review</p> <p>5 them, they -- my understanding is that they've seen a list of</p> <p>6 the ones that they need to pull and those have been pulled. We</p> <p>7 try to pull them before they get there for them. Sometimes they</p> <p>8 ask for more than 1,000 so it's harder to do so, but that's been</p> <p>9 provided.</p> <p>10 THE COURT: Thank you.</p> <p>11 MS. SNAPKA: Your Honor, for the record, I want to</p> <p>12 clarify what I had related to Plaintiff's Counsel was that the</p> <p>13 U.S. Attorney from Manhattan was looking into the matter. I'm</p> <p>14 not sure I specifically said anything about X-rays. I wanted to</p> <p>15 make that clarification for the Court.</p> <p>16 THE COURT: Well, I wanted -- well, what I told you</p> <p>17 all very clearly was that the U.S. Attorney from Manhattan had</p> <p>18 called the local U.S. Attorney for access to discovery documents</p> <p>19 in the depository, which included the X-rays. I don't know if I</p> <p>20 said, "included the X-rays," but I told you the document</p> <p>21 depository. You all knew the X-rays were there.</p> <p>22 Subsequent to that, his motion was filed. I denied</p> <p>23 it, and Mr. Hooper has removed the X-rays. I don't think there</p> <p>24 are any ifs, ands, or buts about it. That may be a matter for</p> <p>25 the U.S. Attorney in Manhattan.</p>
<p style="text-align: right;">Page 87</p> <p>1 THE COURT: I thought so.</p> <p>2 Okay. You're excused for 30 minutes.</p> <p>3 Marshals, would you accompany him? Can I get some</p> <p>4 Marshals here, please, to make his calls, Mr. Hooper.</p> <p>5 And I assume as Liaison Counsel, Ms. Snapka and Mr.</p> <p>6 Darrell -- Mr. Barger that you notified Mr. Hooper and all other</p> <p>7 counsel that the U.S. Attorney was making -- was asking for</p> <p>8 access to those documents?</p> <p>9 MS. SNAPKA: Yes, your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 MR. HOOPER: Your Honor, it's my understanding</p> <p>12 that --</p> <p>13 THE COURT: You're excused, Mr. Hooper.</p> <p>14 Has anyone other than Mr. Hooper removed X-rays from</p> <p>15 the depository?</p> <p>16 MR. GOWEN: My understanding, your Honor, is that</p> <p>17 all the X-rays are in the depository right now. Would you like</p> <p>18 me to go check?</p> <p>19 THE COURT: I think it would be a good idea.</p> <p>20 MR. GOWEN: May I be excused for a second?</p> <p>21 THE COURT: Thank you.</p> <p>22 MS. GREEN: Your Honor, on behalf of Defendants, we</p> <p>23 previously requested of Mr. Watts a listing of all the X-rays</p> <p>24 that are in the depository. We've never received such, so it</p> <p>25 may be a good idea to have one.</p>	<p style="text-align: right;">Page 89</p> <p>1 In fact, would you get Mr. Cusick, the U.S Attorney</p> <p>2 over here, please?</p> <p>3 THE CLERK: Yes, your Honor.</p> <p>4 THE COURT: Thank you.</p> <p>5 (Pause)</p> <p>6 Roman Numeral III, Omni Litigation Support Services'</p> <p>7 Opposed Motion for Reimbursement.</p> <p>8 MR. BARGER: I think Mr. McKibben is going to tell</p> <p>9 you they're going to withdraw that for right now.</p> <p>10 THE COURT: Somehow I thought that would happen.</p> <p>11 MR. MCKIBBEN: That's correct, your Honor.</p> <p>12 We filed a motion -- unopposed Motion for Leave to</p> <p>13 make some corrections and virtually every one has paid except</p> <p>14 for a few and we've kind of worked -- I talked to every one and</p> <p>15 I think we've got almost everything worked out. There are a</p> <p>16 couple of things we may have to resolve by -- I think we talked</p> <p>17 to people about alternate dispute resolution on some of the</p> <p>18 items and I don't think we need the Court's assistance, your</p> <p>19 Honor.</p> <p>20 THE COURT: All right. Then I'll consider that</p> <p>21 motion withdrawn.</p> <p>22 MR. MCKIBBEN: Thank you, your Honor.</p> <p>23 THE COURT: And you have some miscellaneous issues,</p> <p>24 a Motion for Withdrawal and Substitution of Counsel?</p> <p>25 MR. MULLINS: Your Honor, we're going to withdraw</p>

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1 our Motion to Withdraw for Substitution of Counsel, looking at
 2 the Court's prior orders, there's some additional steps we can
 3 take and we're trying to work with the other attorneys.
 4 THE COURT: Thank you.
 5 Then in B under miscellaneous Roman Numeral IV,
 6 Motion to Dismiss Certain Plaintiffs without Prejudice?
 7 MR. CANSLER: I think we handled that earlier. I
 8 think those were the orders you just signed.
 9 THE COURT: All right. Thank you.
 10 And C, U.S. Silica's Motion to Dismiss without
 11 Prejudice in four cases?
 12 MR. RUSSELL: Your Honor, Steve Russell for U.S.
 13 Silica. I've spoken with Plaintiff's Counsel this morning and
 14 we have signed agreed orders --
 15 THE COURT: Thank you.
 16 MR. RUSSELL: -- to present to the Court.
 17 THE COURT: I didn't see anything that they were
 18 agreed before, so I put them on the agenda.
 19 Would you hand them to Ms. Gano, please, sir?
 20 (Pause)
 21 Okay. Those orders are granted. Thank you, sir.
 22 MR. RUSSELL: Thank you, your Honor.
 23 THE COURT: Then the Defendants placed on the agenda
 24 a clarification of the status of the following actions. These
 25 have all been dismissed with Final Judgments.

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1 And I think these were all by -- dismissals by
 2 agreement.
 3 Are these the ones I have to vacate?
 4 (Laughter)
 5 MR. MULHOLLAND: Not necessarily.
 6 Your Honor, I think, as I recall, Bard and White
 7 were dismissed for lack of subject matter jurisdiction.
 8 THE COURT: Okay. So those --
 9 MR. MULHOLLAND: Just orders. They were orders that
 10 were -- the Bland case was the case where we filed the Motion
 11 for Summary Judgment. The Court dismissed that motion for
 12 failure of the Plaintiffs to file Fact Sheets.
 13 THE COURT: Okay. I have to read -- I have to
 14 vacate that, Bland and which other one?
 15 MR. MULHOLLAND: I think that's the only one, Judge.
 16 THE COURT: Weren't these -- a lot of these were
 17 filed originally in this Court, but I vacated for lack of
 18 subject matter jurisdiction --
 19 MS. GREEN: Yes.
 20 THE COURT: -- but not Bland?
 21 MR. MULHOLLAND: Bland is the exception. I think
 22 the others are subject matter.
 23 THE COURT: Okay. But Bland, I'm going to vacate
 24 that dismissal.
 25 MR. MULHOLLAND: Yes, your Honor.

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1 THE COURT: I want to go back -- do you have
 2 anything else on that?
 3 MR. MULHOLLAND: Your Honor, before we get too far
 4 away from the subject on X-rays, apparently the Alexander
 5 plaintiffs had their X-rays re-read in March by a Dr. Altmier. I
 6 don't know if their X-rays were removed from the depository or
 7 not or if Dr. Altmier came to the depository.
 8 MR. LAMINACK: Yes, your Honor. We removed the X-
 9 rays. We had them re-read and then we put them back.
 10 THE COURT: Thank you.
 11 MR. LAMINACK: And that was all before you ever
 12 entered the general order.
 13 THE COURT: Thank you.
 14 Then I think what's left is -- I'm not going to
 15 enter Scheduling Orders on Thirsty. Greer. Moore. Large. Crowe
 16 and McManus -- Adams, Hill, Knight -- I'm sorry, Knight is gone
 17 -- or Clay.
 18 But I do need to have a Scheduling Order on Covey.
 19 So why don't we have suggestions? How long has that been
 20 pending? I think it was pending for -- is this the one that had
 21 the February trial date?
 22 MR. FABRY: It's been pending for a while, your
 23 Honor. Its status has been difficult to ascertain by the
 24 transfers, by the removal. I think any kind of a reasonable
 25 Scheduling Order at this point, 12 months before discovery.

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1 THE COURT: A trial date in a year, then?
 2 MR. FABRY: Yes, your Honor.
 3 THE COURT: Actually I won't be doing a trial date.
 4 I'll just put a Pretrial Conference in a year.
 5 MR. FABRY: Right.
 6 THE COURT: Would you give him a copy of that?
 7 (Pause)
 8 I can hear a Final Pretrial Conference proposal for
 9 September 13 of 2006?
 10 MR. FABRY: That's fine.
 11 THE COURT: And then back tracking, a Joint Pretrial
 12 Order, July the 28th at 3:00 p.m.; dispositive motions, May the
 13 15th, 2006; Joinder of parties, November 30th, 2005; Amendment
 14 of pleadings, February 28th, 2006 -- that's next February, 2006;
 15 and discovery ending on May 31st, 2006.
 16 MR. FABRY: That's fine with Plaintiff, your Honor.
 17 In case I have to take a test, may I get us a copy
 18 of that?
 19 THE COURT: No. That's it.
 20 (Laughter)
 21 There will be a short quiz in the morning.
 22 (Laughter)
 23 No. You get copies of it.
 24 MR. FABRY: Thank you.
 25 THE COURT: Is that quick enough?

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 MR. FABRY: Yes, your Honor.</p> <p>2 MS. GREEN: Ycs.</p> <p>3 THE COURT: And I think I have Scheduling Orders.</p> <p>4 (Court Confers With Clerk)</p> <p>5 I still have motions on Air Liquide.</p> <p>6 Mr. Laminack, have you had time to look at your?</p> <p>7 MR. LAMINACK: I have, your Honor. If I could</p> <p>8 enlist --</p> <p>9 THE COURT: Do you just want to fall on your sword</p> <p>10 now or?</p> <p>11 MR. LAMINACK: No, but I have a volunteer who would</p> <p>12 fall on it.</p> <p>13 You are right.</p> <p>14 THE COURT: That's the best way to start.</p> <p>15 (Laughter)</p> <p>16 MR. LAMINACK: And I understand exactly what you're</p> <p>17 saying.</p> <p>18 THE COURT: I can understand you'd want to clean</p> <p>19 that up, if I give you time?</p> <p>20 MR. LAMINACK: A week? I can tell you --</p> <p>21 THE COURT: After I've given you a year?</p> <p>22 MR. LAMINACK: I can tell you what happened.</p> <p>23 THE COURT: Well, I know what happened. You used</p> <p>24 the same --</p> <p>25 MR. LAMINACK: You got it. You figured it out.</p>	<p style="text-align: right;">Page 96</p> <p>1 inaccuracies about American Optical, but he addressed the</p> <p>2 immediate issue that you had raised in your last order as to</p> <p>3 American Optical, he just -- if you read the four corners though</p> <p>4 of the Second Amended Complaint, he doesn't demonstrate</p> <p>5 diversity restriction.</p> <p>6 THE COURT: That's true and that's a fact.</p> <p>7 MR. LAMINACK: That's true. Please let me fix that.</p> <p>8 THE COURT: I'm not sure I'm going to. I'm going to</p> <p>9 give you -- first I want the documents on the asbestosis before</p> <p>10 I decide whether to allow you to amend. I'm going to carry</p> <p>11 forward the Motion to Dismiss.</p> <p>12 I find that to be absolutely crucial. And I'm going</p> <p>13 to give you two weeks to get those documents in on the</p> <p>14 asbestosis for the people that have made asbestosis claims.</p> <p>15 Mr. Mulholland, unfortunately, after you already</p> <p>16 walked out, he got that information from social security numbers</p> <p>17 and he'll give you that spreadsheet. And those are the people</p> <p>18 you need -- you've got two weeks to find.</p> <p>19 MR. LAMINACK: I understand, your Honor.</p> <p>20 THE COURT: All of those documents.</p> <p>21 MR. LAMINACK: I understand, your Honor.</p> <p>22 THE COURT: And I'd like to know if the experts --</p> <p>23 the diagnosing people that you've gotten in, know that they've</p> <p>24 already been diagnosed with asbestosis.</p> <p>25 MR. LAMINACK: To answer that question is no.</p>
<p style="text-align: right;">Page 95</p> <p>1 THE COURT: Yes, the computer problem. Now what do</p> <p>2 you want to do about, however, the American Optical Motion? Do</p> <p>3 you want to -- can you dismiss them now?</p> <p>4 MR. LAMINACK: No. I want to respond to it because</p> <p>5 I haven't had a chance to respond to that yet. There's a -- and</p> <p>6 that's going to --</p> <p>7 THE COURT: Yes, we have. I've had -- that has been</p> <p>8 on this docket for a year.</p> <p>9 MR. LAMINACK: No. This is a new one. This one</p> <p>10 complains about the one in the final petition that is fixed,</p> <p>11 which caused this whole problem to begin with.</p> <p>12 THE COURT: Well, you fixed it in the second one and</p> <p>13 then in the next one, you didn't.</p> <p>14 MR. LAMINACK: No. I did. That's what caused</p> <p>15 everything to get undone.</p> <p>16 They complained when we had our second one on file.</p> <p>17 They complained. So we went back and fixed it, but it changed</p> <p>18 everything else and went back to the old one, but the AO part</p> <p>19 stayed the same. That's what they're complaining about, the new</p> <p>20 fixed job. They are the only ones. And I'd like to respond to</p> <p>21 that. That is new.</p> <p>22 MR. COHEN: Your Honor, our -- Joe Cohen for</p> <p>23 American Optical.</p> <p>24 Our motion was to the entire complaint. We weren't</p> <p>25 complaining specifically about American Optical -- yes,</p>	<p style="text-align: right;">Page 97</p> <p>1 THE COURT: Thank you.</p> <p>2 MR. LAMINACK: It's in the reports that you have.</p> <p>3 THE COURT: But you told me you didn't know that</p> <p>4 that -- oh, I don't think it's all quite there. If not, make</p> <p>5 sure it's there.</p> <p>6 Thank you.</p> <p>7 MR. LAMINACK: Can I ask one other question, just a</p> <p>8 point of clarification? This involves the X-rays in the</p> <p>9 depository.</p> <p>10 As the Court might guess, a lot of us are interested</p> <p>11 in getting those X-rays re-read so we can take appropriate</p> <p>12 action in the light of your previous orders --</p> <p>13 THE COURT: It might be best if you --</p> <p>14 MR. LAMINACK: -- how do we do that?</p> <p>15 THE COURT: It might be best to bring your</p> <p>16 Defendants -- your experts here and let them read them at the</p> <p>17 depository, considering the way this is progressing. I</p> <p>18 certainly have jurisdiction over Alexander.</p> <p>19 MR. LAMINACK: I'm not concerned about Alexander.</p> <p>20 That's done. But I'm talking about there's a whole bunch of</p> <p>21 them in there that, I mean, I in light of what's happened am</p> <p>22 interested in dismissing some cases if people don't have</p> <p>23 silicosis. And the way to figure that out is to look at that X-</p> <p>24 ray.</p> <p>25 THE COURT: Right. Well, it's your Alexander case</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 is the only one you've got, right? Yes.</p> <p>2 MR. LAMINACK: Right.</p> <p>3 THE COURT: Yes. And those you can see right there</p> <p>4 in the depository.</p> <p>5 MR. LAMINACK: I'm not interested in those. I'm</p> <p>6 interested in the non-Alexander cases that we would like to have</p> <p>7 re-read.</p> <p>8 THE COURT: How many cases -- I thought -- how many</p> <p>9 cases do you have?</p> <p>10 MR. LAMINACK: There are a number of other cases we</p> <p>11 have, your Honor.</p> <p>12 MR. MULHOLLAND: Between ten and --</p> <p>13 MR. LAMINACK: And I'm not the only one in that</p> <p>14 position. I think we're all in that position.</p> <p>15 THE COURT: Sure. You can have anybody come and read</p> <p>16 read them you want.</p> <p>17 MR. LAMINACK: That's a tough deal to have people</p> <p>18 fly to here to read those, your Honor.</p> <p>19 THE COURT: I know--</p> <p>20 MR. LAMINACK: Especially when at least with respect</p> <p>21 to me what's going on is an effort to separate the wheat from</p> <p>22 the shaft here and get rid of a lot of this stuff.</p> <p>23 THE COURT: I understand that.</p> <p>24 MR. LAMINACK: And clean this up and I'd like to do</p> <p>25 that as soon as possible.</p>	<p style="text-align: right;">Page 100</p> <p>1 own counsel, but Mr. Hooper filed a Motion to Remove all of his</p> <p>2 client's X-rays, which were the basis of the diagnoses from the</p> <p>3 document depository. I denied that motion in early -- in mid-</p> <p>4 July. Subsequent to that in the first week of August on his</p> <p>5 own, he determined that I no longer had jurisdiction over his</p> <p>6 cases and went in and removed them all.</p> <p>7 So I have now ordered him to return them forthwith,</p> <p>8 and he has no intention of doing that, apparently. So I felt</p> <p>9 like I needed to tell you about this, and you can report it to</p> <p>10 whomever.</p> <p>11 MR. CUSICK: I'll do that, your Honor.</p> <p>12 MR. HOOPER: May I clear up the record?</p> <p>13 THE COURT: Yes, sir. Are you going to return the</p> <p>14 X-rays?</p> <p>15 MR. HOOPER: After I clear up the record.</p> <p>16 THE COURT: Are you going to return the X-rays?</p> <p>17 MR. HOOPER: Yes, your Honor.</p> <p>18 THE COURT: When?</p> <p>19 MR. HOOPER: They're scheduled to leave Houston at</p> <p>20 noon.</p> <p>21 THE COURT: All right. Thank you.</p> <p>22 MR. HOOPER: First, the -- I voluntarily produced X-</p> <p>23 rays not --</p> <p>24 THE COURT: You've already said that.</p> <p>25 MR. HOOPER: -- not to the document repository, just</p>
<p style="text-align: right;">Page 99</p> <p>1 THE COURT: Well, I can't run the risk of somebody</p> <p>2 making off with them like Mr. Hooper has done, just assume he</p> <p>3 just decided unilaterally that I didn't have any jurisdiction to</p> <p>4 keep them in a depository and make off with them. So that's the</p> <p>5 problem.</p> <p>6 MR. LAMINACK: I understand the problem.</p> <p>7 THE COURT: It's called the "Hooper problem."</p> <p>8 MR. LAMINACK: We need some kind of help on that,</p> <p>9 Judge, I think.</p> <p>10 THE COURT: You can talk to the Defendants on that.</p> <p>11 MR. LAMINACK: Okay.</p> <p>12 THE COURT: Mr. Hooper, what is you -- what have you</p> <p>13 discovered?</p> <p>14 Mr. Cusick?</p> <p>15 MR. CUSICK: Yes, your Honor.</p> <p>16 THE COURT: I asked you here because you had made a</p> <p>17 call to me about -- on behalf of the U.S. Attorney in the</p> <p>18 Southern District of Manhattan -- or Southern District of New</p> <p>19 York over access to the Document Depository?</p> <p>20 MR. CUSICK: Yes, your Honor.</p> <p>21 THE COURT: And because that was an ex parte call, I</p> <p>22 had to call Liaison Counsel and tell them, Ms. Snapka and Mr.</p> <p>23 Barger, that the call had been made and that we wanted to</p> <p>24 preserve the document depository.</p> <p>25 Subsequent to that, Mr. Hooper, and he may need his</p>	<p style="text-align: right;">Page 101</p> <p>1 as the Court has clarified, but to an X-ray repository in Mr.</p> <p>2 Watts' office. The inquiry -- you just clarified it very</p> <p>3 clearly. The inquiry that was discussed with me were documents</p> <p>4 in the repository.</p> <p>5 THE COURT: No. I said they were all the discovery</p> <p>6 documents and I said they were in -- as far as I knew X-rays and</p> <p>7 documents were in Mr. Watts' office.</p> <p>8 MR. HOOPER: But the Court is wrong.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. HOOPER: The documents aren't in Mr. Watts'</p> <p>11 office.</p> <p>12 THE COURT: I know. They're in your office.</p> <p>13 MR. HOOPER: The documents are in the document</p> <p>14 repository on -- I voluntarily produced X-rays to Mr. Watts'</p> <p>15 office. I filed a Motion to Withdraw all X-rays --</p> <p>16 THE COURT: And it was denied.</p> <p>17 MR. HOOPER: -- which was denied. The Court entered</p> <p>18 an order June 30th that said, "I'm remanding the cases in 30</p> <p>19 days."</p> <p>20 THE COURT: And then I stayed the order.</p> <p>21 MR. HOOPER: After 30 days --</p> <p>22 THE COURT: And then I stayed that order before the</p> <p>23 end of the 30 days.</p> <p>24 MR. HOOPER: No. You didn't. You stayed the Order</p> <p>25 on August 5th. I removed the X-rays before you stayed the</p>

<p style="text-align: right;">Page 102</p> <p>1 cases. You entered an order on June 30th staying cases for 30 2 days. After the expiration of those 30 days, after you had 3 ceded your jurisdiction, I removed my client's property from Mr. 4 Watts' office, which had never been ordered by this Court. 5 After that, you entered an order attempting to 6 further stay your order for another 30 days. I didn't do it 7 when you had an order on file saying that you had jurisdiction. 8 I would not have done anything directly to contravene this 9 Court's jurisdiction. I thought that this Court -- 10 THE COURT: I understand, Mr. Hooper, but 11 nonetheless I denied your motion and you took the X-rays out, 12 and after being told by Liaison Counsel that the U.S. Attorney 13 in Manhattan was making inquiries about all discovery documents 14 You may be seated. 15 MR. HOOPER: No. 16 THE COURT: You may be seated. Thank you. 17 MR. HOOPER: May I -- I may not finish my record? 18 THE COURT: You may be seated. Thank you. 19 MR. HOOPER: You are not allowing me to finish my 20 record? 21 THE COURT: Mr. Hooper, you may be seated. Thank 22 you. 23 You may submit anything in writing that you would 24 like to supplement the record. 25 Thank you, Mr. Cusick, very much.</p>	<p style="text-align: right;">Page 104</p> <p>1 a.m. 2 THE COURT: Is Monday a good day? 3 MR. BARGER: I've heard no complaints from anybody 4 about it. 5 MR. LAMINACK: Monday is a good day in what respect? 6 THE COURT: Well, I don't know, Mr. Laminack. But 7 9:00 o'clock that's after the first -- should we make it 9:30? 8 Does everybody like to come in the night before, or you want to 9 come at 9:30 and then 9:30 get you in on the first -- isn't that 10 the first flight of the Southwest? Certainly Continental gets 11 here earlier, but -- 12 MR. BARGER: I think 9:00 is fine from the Defense. 13 THE COURT: 9:00 is fine? 14 MR. BASHLINE: 9:30 for those of us coming out of 15 Houston allows us a breathing period to get from the airport to 16 here. There's a flight that gets in, your Honor, at 8:35 or 17 something, but -- 18 THE COURT: Mr. Hooper will fly you in on his X- 19 rays, that's fine. 20 (Laughter) 21 MR. BASHLINE: 9:30 would be -- any other Houston 22 people like 9:30? 23 THE COURT: Two? 24 MR. BASHLINE: Come on you wimps, put up your hands. 25 THE COURT: Sorry.</p>
<p style="text-align: right;">Page 103</p> <p>1 You may be seated. Thank you. 2 All right. Then we have Alexander versus Air 3 Liquide, I think we have -- I'm going to -- I think I made an 4 order on that? 5 MR. LAMINACK: Yes, your Honor. 6 THE COURT: That I'm going to carry forward all 7 those pending motions for two weeks for Mr. Laminack to get you 8 the information about asbestosis on 73 percent of his claimants, 9 all the documents, including X-rays, diagnoses -- I assume 10 they've got Fact Sheets? 11 MR. MULHOLLAND: Yes, your Honor. 12 THE COURT: And now we have a Motion to Substitute 13 in a new diagnosing physician? 14 MR. MULHOLLAND: I will note they filed a motion to 15 that effect, your Honor, but we have submitted a dispute. 16 THE COURT: Anything else to take up? Do you need a 17 further meeting date for the 17 cases that I still have? 18 (Pause) 19 MR. BARGER: We don't have anything else today. 20 THE COURT: Right, but do you need another meeting 21 date? 22 MR. BARGER: Yes. Do you want to do it in a month? 23 THE COURT: A month is fine. Do you want a date? 24 Ms. Scotch? 25 THE CLERK: Monday, September the 26th, 2005 at 9:00</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. BASILINE: Okay. 0900, Judge, that's fine. 2 THE COURT: And I don't care if you're late. We'll 3 track that flight. 4 (Laughter) 5 MR. BASHLINE: Your Honor, I have absolutely no 6 intention being late unless I'm dead and they can wheel my body 7 back. 8 THE COURT: Thank you very much for your 9 appearances. 10 You're excused. 11 MR. GOWEN: I just wanted to give you an update on 12 the X-rays, your Honor. All the X-rays are there. 13 THE COURT: Thank you. 14 MR. GOWEN: And we do have a list of them. 15 THE COURT: Thank you. If you could give those? 16 MR. GOWEN: I'll give them -- I may not have them on 17 me. 18 (Proceeding Adjourned at 11:17 a.m.) 19 20 21 22 23 24 25</p>

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings
in the above-entitled matter.

August 23, 2005

Signed

Dated

TONI HUDSON

FEDERALLY-CERTIFIED TRANSCRIBER

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